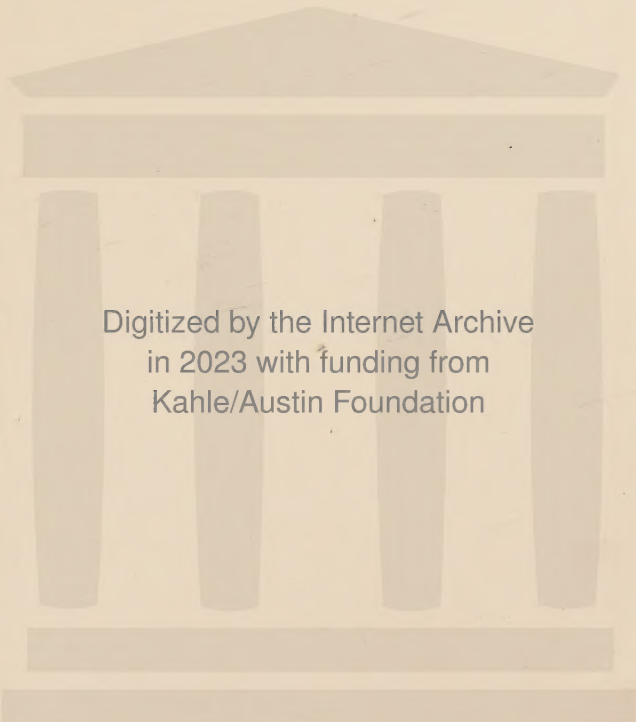




Robert Kerr Blair



Digitized by the Internet Archive
in 2023 with funding from
Kahle/Austin Foundation

THE CONVEYANCING CODE.

EDINBURGH :
JOHN BAXTER AND SON, PRINTERS,
ELDER STREET.

THE CONVEYANCING CODE:

BEING

THE TITLES TO LANDS CONSOLIDATION
(SCOTLAND) ACT, 1868,

THE CONVEYANCING (SCOTLAND) ACT, 1874,

AND

MINOR ACTS RELATING TO CONVEYANCING
AND REGISTRATION,

WITH

FULL EXPLANATORY NOTES APPENDED TO EACH
SECTION AND SCHEDULE.

BY

J. HENDERSON BEGG,

ADVOCATE,

AUTHOR OF "TREATISE ON THE LAW OF SCOTLAND
RELATING TO LAW AGENTS."

EDINBURGH:

BELL & BRADFUTE, 12 BANK STREET.

MDCCCLXXIX.

P R E F A C E.

THE object of this work is to present those modern statutes which almost constitute a Conveyancing Code for Scotland, in the form most convenient for reference, and in such a manner as to exhibit the state of the law on each subject as at the end of the year 1878.

With this view, each statute is printed as it appears in the statute book, with this exception, that the schedules are printed immediately after the sections which refer to them, instead of being collected at the end of each statute. But, in order to distinguish plainly those provisions and schedules which are still operative from those which have been repealed or superseded by later enactments, the latter are printed in much smaller type than the former. The greatest care has been taken to secure the most perfect accuracy of the text. To each section and schedule are appended full explanatory notes, mentioning any other enactments on the same subject, and embodying the decisions of the Court down to the end of the year 1878.

I trust that the plan thus adopted will render this work useful, not only to students of conveyancing, but also to experienced practitioners.

I have to acknowledge the greatest obligations to the *Analysis of the Titles to Lands Consolidation Act, 1868*, by JOHN MARSHALL, Esq., Advocate (now LORD CURRIEHILL), and to the *Analysis of the Conveyancing Act, 1874*, by JOHN T. MOWBRAY, Esq., LL.D., W.S. I am also indebted for much valuable advice and assistance to several fellow-members of the Committee recently appointed by the Juridical Society to prepare a new edition of the volume of Styles relating to heritable rights. Mr MATTHEW LIVINGSTONE, Assistant Keeper of the General Register of Sasines, has kindly revised the notes to the Registration Acts, and supplied me with much practical information. To J. CATHCART WHITE, Esq., Advocate, I am indebted for much opportune aid while the work was passing through the press, including assistance in the preparation of the index.

J. H. B.

24 HERIOT ROW,
EDINBURGH, February 1879.

ADDENDA ET CORRIGENDA.

Page 40, last line. *For* "instrumnt" *read* "instrument."

Page 63, line 7. Additional note :—

The word "grantor," here occurring, is obviously a mistake for "grantee."

Page 71. *After* note (c) *insert* the following notes :—

(d) For example, where the purposes are illegal, or where bequests have lapsed and there is no residuary legatee.

(e) That is to say, the heir-at-law of the grantor, except where the lands are held under a special destination.

Page 79, line 4 of section 24. *For* the words "fact or," *read* the word "factor."

Pages 96 and 99. Additional note to Schedules (P.) and (Q.) :—

Every petition of service should set forth the place where the deceased ancestor died, as the *induciæ* of the petition depend, under section 33, on the place of death. The omission of this particular has frequently led to the proof being improperly taken before the expiration of the *induciæ*. See section 52 of the Conveyancing Act, *post*, p. 403.

Page 244-5. Additional note to Schedule (HH.) :—

The words "*by which the deceased acquired such right*," occurring at the end of the schedule, should have been "*by which such right was acquired*," as the schedule is applicable to deeds *inter vivos* as well as to deeds granted *mortis causa*.

Page 275, note (b). *For* "is," *read* "as."

Page 345. Add at the end of note (e), 16 Scot. Law Rep. 127.

Page 405, line 13. Additional note :—

The word "not," occurring in this line of the section, has been inserted *per incuriam*, as clearly appears from the words immedi-

ately following. These words undoubtedly render Schedule (L.) applicable to heritable securities, while section 64 of the Conveyancing Act, *post*, p. 425, sanctions the continued use of Schedule (KK.), which was the more appropriate form. The use of Schedule N. is merely permissive, not imperative.

Pages 441, 445, and 448. Note to Schedules (C.) No. 2; (E.) No. 2; and (F.) No. 2:—

It is thought that section 117 of the Consolidation Act, *ante*, p. 221, rendering heritable securities moveable *quoad* the succession of the creditor, unless executors are expressly excluded, is applicable to securities over recorded leases; see interpretation clause, *voce* “heritable security” and “lands,” *ante*, pp. 7 and 8. If this be so, the forms provided by the Consolidation Act for the completion of the title of executors to heritable securities may competently be used to complete the title of executors to bonds and assignations in security over recorded leases.

Page 518, line 2 of section 16. *For* “prohibitions” *read* “inhibitions.”

ABSTRACT OF CONTENTS.

	Page
I. THE TITLES TO LAND CONSOLIDATION (SCOTLAND) ACT, 1868 (31 AND 32 VICT. CAP. 101), AS AMENDED BY THE TITLES TO LAND CONSOLIDATION (SCOTLAND) AMENDMENT ACT, 1869 (32 AND 33 VICT. CAP. 116),	1-298
II. THE CONVEYANCING (SCOTLAND) ACT, 1874 (37 AND 38 VICT. CAP. 94),	299-431
III. THE REGISTRATION OF LEASES (SCOTLAND) ACT, 1857 (20 AND 21 VICT. CAP. 26),	432-460
IV. THE REGISTRATION OF LEASES (SCOTLAND) AMENDMENT ACT, 1877 (40 AND 41 VICT. CAP. 36),	461-462
V. THE TRANSMISSION OF MOVEABLE PROPERTY (SCOTLAND) ACT, 1862 (25 AND 26 VICT. CAP. 85),	463-469
VI. THE GLEBE LANDS (SCOTLAND) ACT, 1866 (29 AND 30 VICT. CAP. 71),	470-495
VII. AN ACT TO ALTER SOME PROVISIONS IN THE EXISTING ACTS AS TO REGISTRATION OF WRITS IN CERTAIN REGISTERS IN SCOTLAND (31 AND 32 VICT. CAP. 34),	496-500

	Page
VIII. THE LAND REGISTERS (SCOTLAND) ACT, 1868 (31 AND 32 VICT. CAP. 64), . . .	501-528
IX. AN ACT TO AMEND THE FORM OF WAR- RANT OF EXECUTION ON CERTAIN EX- TRACTS OF WRITS REGISTERED IN THE BOOKS OF COUNCIL AND SESSION AND SHERIFF COURT BOOKS IN SCOTLAND; AND TO PROVIDE FOR THE AUTHEN- TICATION OF CERTAIN EXTRACTS OF WRITS (40 AND 41 VICT. CAP. 40), . . .	529-535
INDICES,	537 <i>et seq.</i>

CONTENTS.

I. THE TITLES TO LAND CONSOLIDATION (SCOT- LAND) ACT, 1868 (31 AND 32 VICT. CAP. 101),

AS AMENDED BY

THE TITLES TO LAND CONSOLIDATION (SCOT- LAND) AMENDMENT ACT, 1869 (32 AND 33 VICT. CAP. 116).

PRELIMINARY SECTIONS, &c.

	Page
TITLE,	1
PREAMBLE,	2
SEC. 1. Short Title,	3
2. Commencement of Act,	4
3. Interpretation of Terms,	5
4. Acts Specified in Schedule (A.) repealed,	9
Schedule (A.) No. 1—Acts and Part of Act repealed,	12
Schedule (A.) No. 2—The Infestment Act of 1845 (8 and 9 Vict. c. 35),	14

I. IRREDEEMABLE RIGHTS.

(1) FORMS OF TITLES EMPLOYED IN CONSTITUTING
AND TRANSMITTING SUCH RIGHTS, AND IN COMPLETING
DISPONEE'S TITLE BY INFESTMENT.

5. In Conveyances of Land, &c., not held burgage certain clauses may be inserted in the short Forms given in Schedule (B.) No. 1,	21
Schedule (B.), No. 1.—Formal Clauses of a Disposition of Land, &c., not held burgage,	23
6. Import of clause expressing manner of holding,	25

	Page
SEC. 7. In Conveyances of Burgage Property certain clauses may be inserted in the Forms given in Schedule (B.) No. 2,	27
Schedule (B.) No. 2.—Formal Clauses of Disposition of Land, &c. held Burgage,	28
8. Import of Clauses in Schedule (B.) Nos. 1 and 2,	29
9. Conditions of Entail may, in Conveyances of Entailed Lands, be inserted by reference merely,	33
Schedule (C.)—Clause of Reference to Destinations and Conditions of Entail, &c.,	36
10. Real Burdens may be referred to as already in the Register of Sasines,	
Schedule (D.)—Clause of Reference to Real Burdens, Conditions, &c., in Investiture,	38
11. Description of Lands contained in recorded Deeds may be inserted in subsequent Writs by reference merely,	39
Schedule (E.)—Clause of Reference to particular Description contained in a prior Deed,	39
12. Clause directing part of Conveyance to be recorded,	40
Schedule (F.) No. 1—Clause of Direction specifying part of Deed which Grantor desires to be recorded,	42
Schedule (F.) No. 2—Warrant of Registration to be written on Deed where it is intended to record it in terms of a Clause of Direction,	42
13. Several Lands conveyed by the same Deed may be comprehended under one general name,	43
Schedule (G.)—Clause of Reference to Conveyance, containing general Designation of Lands,	45
14. Certain Clauses in Entails no longer necessary,	45
15. Instrument of Sasine no longer necessary, but Conveyance may be recorded instead,	46
Schedule (H.) No. 1—Warrant of Registration to be written on a Conveyance, &c., when presented without Assignment apart, or with Writ of Resignation or other similar Writ thereon,	49
Schedule (H.) No. 2—Warrant of Registration to be written on a Conveyance, &c., when presented with Assignment apart, or Notarial Instrument,	49
Schedule (H.) No. 3—Warrant of Registration to be written on a Conveyance presented for registration <i>propria manibus</i> ,	50
16. Mode of expeding Sasine in lands holden Burgage,	51
Schedule (I.)—Instrument of Sasine in Burgage Subjects,	53
17. Not necessary to record the whole Conveyance or Discharge,	53

	Page
Schedule (J.)—Notarial Instrument in favour of Disponee or his Assignee &c.,	56
SEC. 18. Instrument of Resignation <i>ad remanentiam</i> unnecessary, but in place thereof Conveyance in favour of Superior may be recorded,	57
Schedule (K.)—Instrument of Resignation <i>ad remanentiam</i> ,	58
19. Notarial Instruments in favour of general Disponees,	59
Schedule (L.)—Notarial Instrument in favour of a General Disponee or his Assignee, &c.,	62
20. <i>De presenti</i> words, or words of style, unnecessary in <i>mortis causa</i> deeds,	63
21. Trustee or Executor to apply lands for purposes of Trust or Will,	70
22. Assignations to unrecorded Conveyances,	71
Schedule (M.) No. 1.—Assignation of an unrecorded Conveyance,	74
Schedule (M.) No. 2.—Assignation of an unrecorded Conveyance written upon the Conveyance,	75
23. Notarial Instruments in favour of parties acquiring rights to unrecorded Conveyances,	76
Schedule (N.)—Notarial Instrument in favour of an Assignee to an unrecorded Conveyance to be recorded along with the Conveyance,	78
24. Mode of completing Title by a Judicial Factor on a Trust-Estate, &c.,	79
25. Mode of completing Title by a Trustee in Sequestration, and by Liquidators of Joint Stock Companies,	84
Schedule (O.)—Notarial Instrument in favour of a Trustee in a Sequestration or of Liquidators of Joint Stock Companies,	86
Schedule (LL.)—Form of Instrument in favour of a Trustee on a Sequestered Estate, or of Liquidators of a Joint-Stock Company in right of an Heritable Security,	87
26. Heritable Property conveyed for Religious or Educational Purposes to vest in Disponees or their Successors,	88

(2) SERVICES OF HEIRS.

27. Services to proceed by Petition to the Sheriff,	90
28. Petition to be presented to the Sheriff of the County or to the Sheriff of Chancery,	91
29. Nature and Form of Petition,	92
Schedule (P.)—Form of Petition of General Service,	95
Schedule (Q.)—Form of Petition of Special Service,	96
30. Services not to proceed till publication be made,	100

	Page
SEC. 31. Caveats to be received,	106
32. Petition of Service to be equivalent to a Brieve and Claim,	107
33. Procedure before the Sheriff, and the effect of his judgment,	107
34. Case where Domicile of Party is unknown,	110
35. Competing Petition may be presented, and Sheriff, after receiving evidence, give judgment,	111
36. Recording and Extract of Judgment,	112
37. The Extract Decree to be equivalent to an Extract Retour,	114
38. Transmission of Records,	114
39. Clerks of Chancery to be remunerated for keeping Register, &c., by Act of Sederunt,	116
40. No person entitled to oppose a service who could not appear against a brieve of inquest,	117
41. Appeal for Jury Trial,	117
42. Where Sheriff refuses to serve Petitioner, &c., judgment may be reviewed,	119
43. Procedure when a Decree of Service is brought under Reduction.—Effect of the Decree of Reduction,	121
44. Forms and effect of procedure in the Court of Session,	123
45. "Court of Session Act, 1868," to apply to Appeals and Reductions, &c., under this Act,	123
46. A Decree of Special Service, besides operating as a Retour, shall have the operation and effect of a disposition from the deceased to his Heirs and Assignees,	124
47. A Special Service not to infer a general representation, either active or passive,	128
48. Petitioner for Special Service may petition for General Service,	129
49. A General Service may be applied for and obtained to a limited effect by annexing a specification; and it shall infer only a limited passive representation,	130
Schedule (R.)—Form for a General Service where it is to be limited in its effects by a Specification annexed,	131
50. Jurisdiction of the Sheriff of Chancery,	131
51. Power to the Court of Session to pass Acts of Sederunt,	132
52. Appointment of Sheriff of Chancery,	133
53. Agents may practise before Sheriff Courts,	134
54. Salaries of Sheriff of Chancery and Sheriff Clerk of Chancery,	135
55. Salary to be regulated by the Commissioners of the Treasury on vacancy,	135
56. Compensation already awarded not to be affected,	135

SEC. 57. Compensation to be paid,	Page 136
58. Provisions as to depending Petition for Service,	136

(3) COMPLETION OF TITLE OF ADJUDGER.

59. Unnecessary to libel and conclude for decree of Special Adjudication,	137
60. General, and Special, and General Special Charges to be no longer necessary,	138
61. Actions of Constitution and Adjudication against Apparent Heir may be insisted in after the lapse of Six Months,	143
62. Effect of a Decree of Adjudication or Sale,	144

4. CHARTERS AND WRITS OBTAINED FROM SUPERIORS.

(1) *From the Crown.*

63. Signatures for Crown Writs abolished,	145
64. Crown Writs to be obtained by lodging a Draft thereof and Note along with the Title-Deeds,	146
Schedule (S.)—Note for Crown Writ,	148
65. Draft Crown Writ to be revised,	148
66. Rectification of Mistakes in former Titles,	149
67. Intimation of proposed Rectification to be made to Solicitor for Commissioners of Woods and Forests,	150
68. Presenter of Signatures, &c., may refer to Copy of Writ when withheld,	151
69. Amount of Crown Duties to be fixed,	152
70. Clerk's Fees,	153
71. Copy of revised Draft to be furnished to the Party,	154
72. If no Objections, the revised Draft to be attested, and the Crown Writ prepared,	124
73. Crown Writs may be applied for at any time,	155
74. Objections, if any, to Draft Crown Writ to be by a Note,	156
75. Objections, how to be disposed of,	157
76. Procedure if Objections repelled,	158
77. Refusal to revise, how to be complained of,	158
78. Crown Writ as revised to be engrossed and delivered,	160
79. Crown Writs to be valid,	162
80. Ceremony of Resignation abolished,	163
81. Investiture by Resignation from the Crown,	163
82. Investiture by Confirmation from the Crown,	164
83. Crown Writs and Crown Charters may be in the forms given in Schedule (T.),	165

	Page
Schedule (T.) No. 1.—Crown Writ of Resignation,	166
Schedule (T.) No. 2.—Crown Charter of Resignation,	167
Schedule (T.) No. 3.—Crown Writ of Confirmation,	167
Schedule (T.) No. 4.—Crown Charter of Confirmation,	168
SEC. 84. Crown Writs or Precepts to Heirs specially served, how to be obtained,	168
Schedule (U.) No. 1.—Crown Writ of <i>Clare Constat</i> ,	171
Schedule (U.) No. 2.—Precept from Chancery,	173
85. Crown Writs or Precepts of <i>Clare Constat</i> may also be granted to Heirs holding only a General Service,	174
86. Crown Writs or Precepts of <i>Clare Constat</i> to be null unless recorded before First Term after being issued.—Fees to be paid to Sheriffs and Sheriff Clerks for a limited Period,	175
87. Register of Crown Writs to be kept,	176
88. Crown Charters or Writs of <i>Novodamus</i> , how to be ob- tained,	178
89. Lodging Draft Crown Writ with Note, and recording Note, to be equiva- lent, in competition, to presenting Signature and recording Abstract,	179
90. Crown Writs to be in the English Language,	180
91. Court of Session to frame Regulations,	180
92. Salary to be regulated by Commissioners of the Treasury, when Vacancy,	182
93. Power to Prince and Steward of Scotland to appoint his own Presenter of Signatures, &c.,	183
94. Compensation already awarded not to be affected,	184
95. Compensation, how to be paid,	184
96. Substitute to be appointed to Sheriff of Chancery or Pre- senter of Signatures, in event of absence or disability,	185
(2) <i>From Subject Superiors.</i>	
97. Subject Superior may be compelled to grant Entries by Confirmation,	185
98. Confirmation by Subject Superior to be by Writ or Charter in Form of Schedule (V.) Nos. 1 and 2,	187
Schedule (V.) No. 1.—Writ of Confirmation by Subject Superior,	188
Schedule (V.) No. 2.—Charter of Confirmation by Subject Superior,	188
99. Investiture by Resignation from Subject Superior,	188
Schedule (V.) No. 3.—Writ of Resignation by Subject Superior,	190
Schedule (V.) No. 4.—Charter of Resignation by a Subject Superior,	190
100. All Writs and Charters from Subject Superior may refer <i>Tenendas</i> and <i>Reddendo</i> ,	191
101. Precepts and Writs of <i>Clare Constat</i> from Subject Superior,	193

	Page
Schedule (W.) No. 1.—Writ of Clare Constat by a Subject Superior,	194
Schedule (W.) No. 2.—Precept of Clare Constat by a Subject Superior,	196
Sec. 102. Heir in Burgage Subjects may make up title by Writ of Clare Constat,	197
Schedule (W.) No. 3.—Writ of Clare Constat in Burgage Subjects,	198
103. Writs of Clare Constat from Subject Superiörs, &c., not to fall by Death of the Grantor,	199

(3) Forfeiture and Relinquishment of Mid-Superiorities.

104. Where Subject Superior's title incomplete, owner may in certain cases apply to Lord Ordinary on the Bills to ordain Superior to complete his title and grant an Entry under pain of forfeiture,	200
Schedule (X) No. 1.—Petition to the Lord Ordinary for Forfeiture of Superiority where Reddendo does not exceed Five Pounds,	202
Schedule (X.) No. 2.—Interlocutor by Lord Ordinary on above Petition,	203
Schedule (X.) No. 3.—Decree by Lord Ordinary on above Petition,	203
Schedule (AA.) No. 1.—Writ of Confirmation proceeding on a Decree of Forfeiture or Relinquishment,	204
Schedule (AA) No. 2.—Writ of Resignation proceeding on a Decree of Forfeiture or Relinquishment,	204
Schedule (AA.) No. 3.—Writ of Clare Constat proceeding on a Decree of Forfeiture or Relinquishment,	205
105. Owner may in such case apply to Lord Ordinary on Bills to authorize application for an entry by the Crown or mediate Over Superior as in vice of the recusant Superior,	205
Schedule (Y.) No. 1.—Petition to the Lord Ordinary for Forfeiture of Feu Duties under or above Five Pounds,	207
Schedule (Y.) No. 2.—Interlocutor by Lord Ordinary in above Petition,	208
Schedule (Y.) No. 3.—Decree by Lord Ordinary in above Petition,	208
Schedule (Y.) No. 4.—Finding for Expenses in above Petition,	209
Schedule (Z.) No. 1.—Writ of Confirmation on Decree of Forfeiture in case of Feu Duties above Five Pounds,	209
Schedule (Z.) No. 2.—Writ of Resignation on Decree of Forfeiture in case of Feu Duties above Five Pounds,	210
106. Lands to be held temporarily of the Crown or mediate Superior,	210
107. The party in right of the Superiority may lodge a Minute tendering relinquishment of his right, and if accepted by the Petitioner the Lord Ordinary may interpose his authority,	211
Schedule (BB.) No. 1.—Form of Minute of Relinquishment of Superiority by Apparent Heir,	212
Schedule (BB.) No. 2.—Minute of Acceptance of above Relinquishment,	212

	Page
Schedule (BE.) No. 3.—Decree of Lord Ordinary following on the above Minutes,	213
SEC. 108. Over Superior's rights not to be extended or affected,	213
109. Vassal obtaining or accepting Forfeiture or Relinquishment of Superiority to be liable for its value, but Forfeiture or Relinquishment not to infer Representation,	213
110. Mode of relinquishing Superiorities,	214
Schedule (CC.) No. 1.—Deed of Relinquishment of Superiority,	215
Schedule (CC.) No. 2.—Acceptance by Vassal written on Deed of Relinquishment,	215
111. Investiture by Over Superior,	215
Schedule (CC.) No. 3.—Crown Writ of Investiture written on Deed of Relinquishment,	217
112. Application of Price of Entailed Superiorities—Price of Superiorities of Entailed Lands may be charged on the Entailed Estate,	217

(4) *General Provisions.*

113. Providing for payment in lieu of Casualties of Superiority in case of Lands conveyed for Religious Purposes,	218
114. Writs of Confirmation, &c., by Subject Superiors to be tested,	219
115. Charters and Writs to operate as Confirmation of all prior Conveyances, &c.,	220
116. Stamp Duty on Writs of Confirmation, &c.,	220

II. REDEEMABLE RIGHTS.

(1.) CONSTITUTION OF REDEEMABLE RIGHTS.

117. Heritable Securities to form Moveable Estate; except where conceived in favour of Heirs, excluding Executors, and quoad fiscum.—Not to belong to Husband jure mariti, nor to Wife jure relictæ.—Nor to be computed in legitim,	221
Schedule (DD.)—Form of Minute excluding Executors in an Heritable Security,	226
Schedule (EE.)—Form of a Minute of Removal of the Exclusion of Executors in an Heritable Security,	226
118. Bonds and Dispositions in Security may be granted in the form No. 1. of Schedule (FF.)	227
Schedule (FF.) No. 1.—Form of a Bond and Disposition in Security,	228
119. Explanation of Clauses in Schedule (FF.) No. 1.—Clauses reserving right of Redemption, and of obligation to pay expense of Assignment or Discharge and Power of Sale, valid, &c.,	230
Schedule (FF.) No. 2.—Form of Schedule of Intimation, Requisition, and Protest,	236

	Page
Schedule (FF.) No. 3.—Certificate by Notary on Copy of foregoing Schedule,	237
SEC. 120. Securities may be registered during Lifetime of Grantee, or Title completed after his Death,	238
121. Sale carried through in Terms of this Act to be valid to the Purchaser,	238
122. Creditors selling to count and reckon for the Surplus of the Price, and to consign the same in the Bank,	239
123. On Sale and Consignation of Surplus, Lands to be dis-encumbered of the Security,	240

(2) TRANSMISSION OF REDEEMABLE RIGHTS.

124. Securities to be transferred in the Form prescribed.—When Conveyance of Heritable Security is contained in a general Deed of Conveyance, the whole such Deed need not be recorded,	241
Schedule (GG.)—Form of Assignment of a Bond and Disposition in Security constituted by infeftment,	242
Schedule (HH.)—Form of Instrument in favour of an Assignee to an Heritable Security following on a deed granted for further purposes or objects,	244
125. Completion of Title of Executors or Executor-nominate, or Disponee or Legatee of an Heritable Security, or of Heir where Executors excluded,	245
Schedule (II.)—Form of Writ of Acknowledgment by a person infest in Lands, in favour of the Executors or Executor nominate, or of the Disponees or Disponee, Legatees or Legatee, or heir of the Creditor in an Heritable Security affecting such Lands,	246
126. Completion of Title of Executors, &c. of Creditor dying intestate,	247
Schedule (JJ.)—Form of Instrument in favour of an Executor or Heir of a Creditor who died intestate in right of an Heritable Security,	249
127. Executor-nominate or Disponee <i>mortis causa</i> may complete Title by Notarial Instrument,	250
Schedule (KK.)—Form of Instrument in favour of the Executors or Executor nominate, or of the Disponee or Legatee of a Creditor in right of an Heritable Security,	250
128. Form of completing Title of Heir where Executors are excluded,	252
129. Adjudgers may complete their Title by recording Abbreviate of Adjudication,	253

	Page
SEC. 130. Unregistered Security or Assignment to be available to Executors, &c. of Grantee,	253
Schedule (MM.)—Form of Instrument on an unrecorded Bond and Disposition in Security, or unrecorded Assignment in favour of the Executor or Donee, or Assignee, or Legatee, or Heir of the Creditor,	256
131. This Act not to affect liability of Debtors on their Lands,	257

(3) DISCHARGE AND RESTRICTION OF REDEEMABLE RIGHTS.

132. How any Heritable Security may be renounced or discharged,	258
Schedule (NN.)—Form of Discharge of Bond and Disposition in Security, &c.,	258
133. Heritable Security, how restricted,	259
Schedule (OO.)—Form of Deed of Restriction of an Heritable Security,	260
134. Act to apply to all Heritable Securities,	261
135. Parties may use the present Forms if they see fit,	262
136. Fees to be taken by Town Clerks of Royal Burghs and Keepers of Registers in Office at 1st October 1845, during their respective Rights of Office, &c.,	262

III. GENERAL ENACTMENTS.

137. This Act to apply to Lands held by any Description of Tenure,	264
138. Short Clauses of Consent to Registration may be used in any Deed,	264
139. Females may act as Instrumentary Witnesses,	265
140. Additional sheets may be added to Writs,	266
141. All Deeds, &c. recorded in Register of Sasines to have Warrants of Registration endorsed, except certain Burgage Deeds,	267
142. Recording of Conveyances in the Register of Sasines authorized,	270
143. Conveyances and Instruments may be recorded of new,	271
144. Recorded Instruments not to be challenged on the ground of erasures,	272
145. Not competent to challenge existing Warrants of Registration on certain grounds,	273
146. Obligations appointed to be inserted in Instruments of Sasine shall be inserted in Notarial Instruments,	274

	Page
SEC. 147. Prohibition against Sub-infeudation not to be affected,	275
148. In all questions under the Bankrupt Acts in Scotland, the Dates of Registration of Assignations, &c., to be held to be the Dates of the Instruments,	276
149. Deeds and Instruments may be partly written and partly printed or engraved,	277
150. Debts affecting Lands exchanged for other Lands to affect such other Lands in lieu thereof,	279
151. Provisions for Lands held Burgage where no Burgh Register of Sasines is kept,	280
152. Provisions for Lands in the Burgh of Paisley held by Book- ing Tenure,	281
153. Fees of Town Clerks appointed prior to 8th March 1860 reserved, but no Town Clerks appointed after that Date to have Claims for Compensation for Loss of Fees, &c.,	282
154. Official Acts of Town Clerks and Keepers of Registers of Sasines not to be affected by their personal Interests in recorded Writs,	283
155. Inhibitions to take effect from Date of Registration of Notice, &c.,	284
Schedule (PP.)—Notice of Inhibition,	286
156. Short Form of Letters of Inhibition,	286
Schedule (QQ.)—Form of Letters of Inhibition,	288
157. No Inhibition to have effect against acquirenda, unless in case of Heir under Entail or other indefeasible Title,	289
158. Inhibitions on depending Summons to be recalled on Peti- tion to Lord Ordinary,	290
159. Litigiousity not to begin before date of registration of Notice of Summons,	291
Schedule (RR.)—Notice of Summons of Reduction, Ad- judication, &c.,	292
160. Right to Heirship Moveables abolished,	293
161. Judgment of Lord Ordinary on the Bills subject to review of Inner House, and Judgments in certain cases to be final,	293
162. Court of Session may fix and regulate Fees,	294
163. Old Forms of Conveyances may be used,	295

II. THE CONVEYANCING SCOTLAND ACT, 1874

(37 AND 38 VICT. CAP. 94).

	Page
TITLE,	299
PREAMBLE,	299
SEC. 1. Short title,	300
2. Commencement of Act,	300
3. Interpretation,	301
4. (1.) Renewal of Investiture abolished,	303
(2.) Infetment to imply entry with superior,	306
Schedule (A.)—Form of notice to be given to a superior of change of ownership,	312
(3.) Implied entry not to affect rights of superiors to feu- duties, &c.,	314
(4.) Action in lieu of a declarator of non-entry,	317
Schedule (B.)—Form of Summons of Declarator and for payment of a Casualty,	322
5. Compositions payable by corporations or trustees or persons having separate interests,	324
6. Consolidation of superiority with property,	327
Schedule (C.)—Form of Minute for effecting Consolidation of Lands,	328
7. Consolidation not to affect or extend superior's right,	329
8. Memorandum of allocation of feu-duty,	329
Schedule (D.)—Form of Memorandum of Allocation of Feu Duty,	331
9. Estates to vest in heirs without service,	331
10. Completion of title when deceased heir not served.—Petition to be proceeded with as if it were a petition for special service,	333
Schedule (E.)—Form of petition for completing a Title to Lands where a Proprietor or Proprietors having only a Personal Right have intervened between the Pro- prietor last infet and the Petitioner,	336
11. Error in character in which heir entered not to affect entry,	339
12. Heir not liable beyond value of estate,	340
13. Right of any person to succession as heir may be challenged within twenty years,	341
14. Legal remedies to prevent entry preserved,	343
15. Redemption of Casualties,	343
16. Casualties redeemed to be discharged,	346
Schedule (F.)—Form of Discharge of Casualties,	347

	Page
SEC. 17. Option to superior of payment of an annual sum, . . .	348
Schedule (G.)—Form of Memorandum constituting a Feu	
Duty or additional Feu Duty,	349
18. Entails not to bar redemption,	350
19. Redemption of casualties by a mid-superior,	351
20. Commutation of carriages and services by agreement, or by Sheriff,	352
21. Commuted value to be feu-duty.—Not barred by entails, . . .	353
22. Monopolies of superior's agents annulled,	354
23. In absence of express condition, no casualties in feus created after commencement of Act.—Increase or reduction of feu-duty or periodical additional payment may be stipulated,	356
24. Where feu rights stipulating or inferring casualties are contracted to be granted,	357
25. Distinction between burgage and feu abolished.—Registration of writs in burgh register.—Provisions for lands in Paisley held by booking tenure,	359
26. Form of conveyances,	362
27. The word "dispose" unnecessary,	363
28. Date of entry,	364
29. General dispositions forming links of series of titles not objectionable on certain grounds,	365
30. Conveyances and discharges of real burdens.—Real burdens effectual in competition from date of recording; mode of completing title to real burdens,	366
31. A general service to be equivalent to a general disposition, . . .	368
32. Reservations, conditions, and covenants affecting lands may be imported by reference,	370
Schedule H.—Form of reference to a deed, instrument, or writing for reservations, burdens, and conditions affecting lands,	372
33. All writs before being recorded to have warrants of registration,	372
34. Title and period of prescription,	373
35. Registration of a decree of division,	376
36. Effect of decree of sale of glebe,	377
37. Distinction between heritage and conquest abolished, . . .	378
38. Certain rules as to probative deeds altered,	378
39. Deed not to be invalid because improbable,	380
40. Holograph testamentary writings,	383

	Page
SEC. 41. One notary or justice of the peace and two witnesses to be sufficient where party cannot write,	383
Schedule I.—Form of docquet where granter of deed cannot write,	385
42. Inhibitions to prescribe in five years.—But may be registered anew,	386
Schedule J.—Form of memorandum recording an inhibition of new,	387
43. Completion of title of heir of last trustee,	387
44. Provisions for the case of a person appointed by the Court to administer a trust,	389
45. How title shall be completed when the holder of an office or proprietor is <i>ex officio</i> a trustee and his successor in office takes the trust,	390
46. Trustees or executors may complete title where no direct conveyance of lands to them,	391
47. Securities upon land, and relative personal obligations, shall transmit against heirs and disponees,	393
Schedule K.—Form of minute to be presented in Bill Chamber of Court of Session, or in Sheriff Court, for warrant to charge an heir or donee under a personal obligation by his ancestor or author,	395
48. Provisions for disencumbering lands sold under heritable securities when no surplus emerges,	396
Schedule L., No. 1.—Form of certificate where lands are sold under heritable security and no surplus emerges,	397
49. Provision for disencumbering lands of heritable security,	398
Schedule L., No. 2.—Form of certificate where lands have been redeemed of heritable security, but discharge cannot be obtained,	399
50. Form and effect of assigning right of relief or other right affecting land,	400
Schedule M.—Form of assignation of right of relief, &c.,	401
51. Probate equivalent to will or extract for completing title,	402
52. Decrees of service unchallengeable on certain grounds,	403
53. Form of completing title to heritable securities under a general disposition,	404
Schedule N.—Form of instrument in favour of a general donee or his assignee in right of an heritable security,	406
54. Recorded deed or instrument unchallengeable on certain grounds,	407
55. Section 118 of the Bankruptcy Act of 1856 repealed,	408

	Page
SEC. 56. Form of executing deeds by companies under the Acts of 1862 and 1867,	410
57. Certain offices abolished, and the duties of the Sheriff of Chancery, &c., enlarged,	411
58. Provisions as to Chancery office,	412
59. Act shall apply to lands held of the Crown and Prince,	412
60. Title to private estates of Her Majesty in Scotland,	413
61. Section 11 of Titles to Land Consolidation Act repealed.—Description of lands contained in recorded deeds may be inserted in subsequent writs by reference merely.—Reference already made in recorded deed not challengeable if certain particulars correctly given,	414
Schedule O.—Clause of reference to particular description of lands contained in a prior conveyance, deed, or instrument,	417
62. Section 62 of the Titles to Land Consolidation Act, 1868, and section 4 of the Titles to Land Consolidation Amendment Act, 1869, repealed.—Effect of a decree of adjudication or sale,	418
63. Section 125 of Titles to Land Consolidation Act, 1868, repealed.—Completion of title of executors nominate, or disponee or legatee of an heritable security, or of heir where executors excluded,	422
64. Section 127 of last-recited Act repealed.—Executor nominate or disponee <i>mortis causa</i> may complete title by notarial instrument,	425
65. Section 129 of last-recited Act repealed.—Adjudgers may complete their title by recording abbreviate or extract decree of adjudication,	428
66. Schedules to be part of Act,	430
67. Repeal of Acts, &c.,	430
68. Saving clause,	430
LIST OF SCHEDULES,	431

III. THE REGISTRATION OF LEASES (SCOTLAND) ACT, 1857 (20 AND 21 VICT. CAP. 26).

TITLE,	432
PREAMBLE,	432
SEC. 1. Long leases, and assignations thereof, registerable in Register of Sasines,	432

	Page
SEC. 2. Recorded leases effectual against singular successors in the lands let,	434
3. Assignations of recorded leases,	435
Schedule (A.)—Form of Assignation of Lease,	436
4. Assignations in Security,	436
Schedule (B.)—Form of Bond and Assignation in Security,	437
5. Where party presenting for registration not original lessee or assignee,	439
Schedule (C.)—Forms of Notarial Instruments in favour of a party not the Original Grantee—No. 1.—Case of Lease,	439
Schedule (C.), No. 2.—Case of Assignation in Security,	441
6. Translations of Assignations in Security.—Creditor's entry to possession in default of payment,	441
Schedule (D.)—Form of Translation of Assignation in Security,	442
7. Heir may complete title by writ of acknowledgment,	443
Schedule (E.)—Form of Writs of Acknowledgment—No. 1.—Acknowledgment of Heir in Lease,	444
Schedule (E.), No. 2.—Acknowledgment of Heir of Creditor in Assignation in Security,	445
8. Heir of Disponee may complete Title by recording Notarial Instrument,	445
Schedule (F.)—Form of Notarial Instrument in favour of Heir in recorded Lease or Assignation in Security, or of Trustee on Sequestrated Estate—No. 1.—Case of Lease,	446
Schedule (F.), No. 2.—Case of Assignation in Security,	448
9. Where assignee has died without recording assignation, mode of making up title,	448
10. Adjudgers to complete right by recording abbreviate,	449
11. Trustees on sequestrated estate may be entered on register,	449
12. Preferences regulated by date of recording transfer,	450
13. Renunciations and discharges to be recorded,	450
Schedule (G.)—Renunciation of Lease,	451
Schedule (H.)—Form of Discharge of Bond and Assignation in Security,	451
14. Entry of decree of reduction,	452
15. Mode of registering.—Extracts to make faith as writs registered,	452
16. Registration equivalent to possession,	453
17. Leases, with obligation to renew, registerable,	454

	Page
SEC. 18. No lease executed after date of Act to be registerable where name of lands and boundaries not given,	455
19. Extracts registerable where leases recorded in Court of Session or Sheriff Court Books prior to Act,	455
20. Clauses in Schedules to be held to import and to have effect as declared by 10 and 11 Vict. c. 50,	456
21. Short Title,	460
LIST OF SCHEDULES,	460

IV. THE REGISTRATION OF LEASES (SCOTLAND) AMENDMENT ACT, 1877 (40 AND 41 VICT. CAP. 36).

TITLE,	461
PREAMBLE,	461
1. "Commissary" to be read in recited Act after "Sheriff,"	461
2. Act 49 Geo. III. c. 42, not to be affected,	461
3. Short Title,	462

V. THE TRANSMISSION OF MOVEABLE PROPERTY (SCOTLAND) ACT, 1862 (25 AND 26 VICT. CAP. 85).

TITLE,	463
PREAMBLE,	463
SEC. 1. Personal bond or conveyance of moveable estate may be assigned in the form set forth in Schedule (A.),	463
Schedule (A.),	464
Schedule (B.),	465
2. Certified copy to be delivered to person or persons to whom intimation may in any case be requisite,	465
Schedule (C.),	465
3. As to transmission of personal bond, &c., according to pre- sent forms,	467
4. Interpretation of terms,	467
5. Short Title,	469
LIST OF SCHEDULES,	469

VI. THE GLEBE LANDS (SCOTLAND) ACT, 1866 (29 AND 30 VICT. CAP. 71.)

	Page
TITLE,	470
PREAMBLE,	470
SEC. 1. Short Title,	470
2. Interpretation of Terms,	471
3. Power to grant Leases not exceeding eleven years,	471
4. Power to sell servitudes or right of pasturage,	472
5. Application to Court to grant feus,	472
6. Consent of Presbytery to be obtained before application made,	473
7. Also consent of heritors,	473
8. Consent of heritors, how to be determined and proved,	474
9. Particulars to be stated in application,	474
10. Intimation to be made of application,	483
11. Power of any conterminous proprietor to appear and object in Court,	484
12. Court may remit petition for inquiry into facts,	484
13. Court may grant authority subject to certain conditions,	485
14. Court may authorize construction of streets, &c.,	486
15. To whom feu duties, &c., to be made payable,	486
16. Further provisions as to feu duties,	487
17. Right of pre-emption by proprietors whose lands are conterminous with the glebe,	488
18. Provision as to cost of application to Court,	490
19. Casualties to be applied to extinction of costs, and provision as to payment of costs,	491
20. Title, how to be granted,	492
21. Full value to be stipulated to be paid without taking money by way of fine, &c.,	493
22. Minister to enjoy same privilege as other superiors,	494
23. Court to pass Acts of Sederunt,	494
24. Saving existing Acts authorizing the feuing of glebes,	495

VII. AN ACT TO ALTER SOME PROVISIONS IN
THE EXISTING ACTS AS TO REGISTRA-
TION OF WRITS IN CERTAIN REGISTERS
IN SCOTLAND (31 AND 32 VICT. CAP. 34).

	Page
TITLE AND PREAMBLE,	496
SEC. 1. Writs given in to be registered in the Books of Council Session not to be given out,	497
2. Writs registered as probative writs not to be given back.— Extracts of indentures of apprenticeship may be received in evidence,	498
3. Extracts to bear certificate of Stamp Duty,	500

VIII. THE LAND REGISTERS (SCOTLAND) ACT,
1868 (31 AND 32 VICT., CAP. 64).

TITLE AND PREAMBLE,	501
SEC. 1. Short Title,	501
2. Interpretation of Terms,	501
3. In General Register of Sasines, Writs to each County to be kept separate,	502
4. All Writs shall have a Warrant of Registration endorsed thereon specifying county or counties in which lands lie,	504
Schedule (A) No. 1.—Warrant of Registration on a Writ to be registered for publication,	505
Schedule (A) No. 2.—Warrant of Registration on a Writ when presented with Assignment apart, or Notarial Instrument for publication,	506
5. Competent to record Writs in other County or Counties to which they refer by new warrant,	506
6. Provision for Writs transmitted by post to General Register of Sasines,	507
7. Registration, how to be made,	507
8. Particular Register of Sasines abolished,	508
9. Printed Abridgments and Indexes to be prepared contem- poraneously with Record,	509
10. Printed Abridgments and Indexes to be transmitted to Counties,	510
11. Surplus Copies of former Abridgments &c., and Indexes, to be sent to Counties,	511

	Page
SEC. 12. Registration in General Register of Sasines equivalent in certain cases to Registration in Books of Council and Session,	512
Schedule (A.) No. 3.—Warrant of Registration on a Writ to be registered for preservation, or preservation and execution, as well as publication,	514
Schedule (B.)—Extract of Deed containing Warrant of Execution,	515
13. No higher fees to be chargeable for Writs registered for preservation and execution as well as publication,	516
14. Registered Writs to be authenticated,	517
15. Register of Interruptions of Prescriptions to be discontinued,	517
16. Particular Registers of Inhibitions abolished,	518
17. General Register of Inhibitions and Register of Adjudications to be treated as one Register,	519
18. Particular Register of Hornings, &c., not to be affected,	519
19. Provision as to Official Searchers,	520
20. Establishment of General Register of Sasines and Inhibitions to be regulated,	520
21. Remuneration to Sheriff Clerks,	521
22. Power to Keepers of Registers whose offices are discontinued to apply for compensation,	521
23. Responsibilities of Keepers of Particular Registers to attach to Keeper of General Register,	522
24. Directions and forms may be given by Lord Clerk Register,	522
25. Power to Treasury to prepare amended Table of Fees of Registration,	522
26. As to salary and duties of Lord Clerk Register,	523
27. Not to extend to Burgh Registers,	523
28. Commencement of Act,	523
LIST OF SCHEDULES,	523
TREASURY MINUTE AS TO SEARCHES,	524
FEES IN THE LORD CLERK REGISTER'S DEPARTMENT,	526
FEES IN THE SASINE AND HORNING OFFICES,	528

IX. AN ACT TO AMEND THE FORM OF WARRANT OF EXECUTION ON CERTAIN EXTRACTS OF WRITS REGISTERED IN THE BOOKS OF COUNCIL AND SESSION, AND SHERIFF COURT BOOKS IN SCOTLAND. AND TO PROVIDE FOR THE AUTHENTICATION OF CERTAIN EXTRACTS OF WRITS (40 AND 41 VICT. CAP. 40).

	Page
TITLE AND PREAMBLE,	529
SEC. 1. Extracts of Writs registered in Books of Council and Session to have, in certain cases, Warrant for Execution. — Form of Warrant of Execution inserted in Extracts of all Protests, &c.	529
2. Extracts of Writs registered in Sheriff Court Books to have Warrant of Execution in certain cases,	530
Schedule—Form of Warrant of Execution inserted in Extracts of all Protests, &c., registered in the Books of Council and Session and Sheriff Court Books	530
3. Competent to Arrest, Charge, and Poinde, by virtue of the Extract with Warrant for Execution thereon,	531
4. Warrants of Execution unchallengeable on certain grounds,	531
5. Extracts of Deeds registered in the Books of Council and Session, and Register of Sasines, to be authenticated,	532
6. Writs registered in the Register of Sasines for Preservation only may afterwards be registered for Preservation and Execution,	533
7. After transmission of volumes of Records of Books of Council and Session to the Lord Clerk Register, the Deputy-Keeper of Records may issue extracts of any deeds recorded in said volumes, and authenticate the same as well as other extracts,	534
8. Commencement and extent of Act,	535
INDEX,	539
INDEX OF CASES,	600
INDEX OF ACTS OF PARLIAMENT REFERRED TO, besides those contained in this work and those repealed by the Consolidation Act of 1868,	602

31 & 32 VICTORIÆ REGINÆ,

CAP. CI.

An Act to Consolidate the Statutes relating to the Constitution and Completion of Titles to Heritable Property in Scotland, and to make certain changes in the Law of Scotland relating to Heritable Rights.—[31st July 1868.]

[“The Titles to Land Consolidation (*Scotland*) Act 1868.”]

As amended (a) by

32 & 33 VICTORIA,

CHAP. 116.

*An Act to amend “The Titles to Land Consolidation (*Scotland*) Act 1868.”*—[11th August 1869.]

[“The Titles to Land Consolidation (*Scotland*) Amendment Act 1869.”]

(a) The amendment of the principal Act is effected by the repeal of sections 22, 24, 62, 97, 118, 119, 130, and 141, and the substitution therefor of amended sections. Thus, for example, section 2 of the amending Act provides that “Section twenty-two of “the recited Act is hereby repealed, and in place thereof it is enacted “that the following words shall be deemed and be taken to be the “twenty-second section of the recited Act, and the recited Act shall “be read and construed as if the twenty-second section thereof had “been originally expressed in the following words; viz. :—” and then follows the amended twenty-second section. The substitution of the other amended sections is effected in precisely the same manner; and section 10 of the amending Act provides that “The amended “sections herein-before enacted shall be held to form part of the recited Act, and may hereafter be printed as forming portions thereof, “in place of the several sections hereby repealed.”

Page 1, note (a), line 4.

The words “Section twenty-two of the recited Act is hereby repealed, and in place thereof it is enacted that,” and the similar introductory words of sections 3, 5, 6, 7, 8, and 9, are repealed by “The Statute Law Revision Act 1883” (46 and 47 Vict. c. 39). But the effect of this repeal is merely to delete, as now superfluous, the words referred to, the Revision Act expressly providing that “where any enactment not comprised in the schedule has been repealed . . . by any enactment hereby repealed, such repeal . . . shall not be affected by the repeal effected by this Act.”

The amended sections are accordingly printed in this compendium in place of the repealed sections.

The Conveyancing Act of 1874 has adopted a similar plan for the amendment of sections 62, 125, 127, and 129 of the Consolidation Act, but it does not authorise the substituted sections to be printed as forming portions of the latter Act. The original sections are accordingly printed herein in the same type as other sections now repealed of the Consolidation Act.

WHEREAS it is expedient to consolidate the Statutes which have been passed during recent years relating to the forms of constituting and completing Titles to Land and to Heritable Securities in *Scotland* (a), and to make certain changes upon the Law of *Scotland* in regard to Heritable Rights, and to the succession to Heritable Securities in *Scotland* (b): Be it therefore enacted (c) by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

(a) The statutes here referred to are those specified in Schedule (A.), No. 1, p. 12. The mode in which the present Act effects the consolidation of these statutes is by repealing the whole of them (with the exception of the Infestment Act of 1845, only one section of which—the sixth—is repealed), and by then re-enacting their provisions, with various amendments and additions.

(b) The changes effected by the Act are chiefly these—(1) Lands and other heritable property may be bequeathed in the same way as moveables—sections 20 and 21. (2) An extracted decree of special service is declared to vest in the heir so served a personal right to the lands contained in the service, from the date of its being recorded in Chancery—section 46. This provision is now superseded by section 9 of the Conveyancing Act, under which a personal right to lands now vests in the heir without service. (3) Heritable securities are declared to be moveable as regards the succession of the creditors therein, unless executors are expressly excluded—section 117; and provision is made for the completion of the title of the representatives of such creditors—sections 125, 126, and 127, amended by sections 63 and 64 of the Conveyancing Act. (4) A new and short form of a deed of restriction of a heritable security is introduced—section 133. (5) Females of the age of fourteen or upwards are declared to be competent instrumentary witnesses—section 139. (6) Additional sheets may be added, when necessary, to writs or deeds permitted or directed by statute to be engrossed on any conveyance or deed—sec-

tion 140. The “writs” referred to are chiefly writs of confirmation and writs of resignation, which are now rendered incompetent by section 4 of the Conveyancing Act. (7) A warrant of registration (which may be signed, not only by an individual agent, but by the subscription of any firm of which he is a partner) is required to be indorsed on every deed or writing presented for registration in any Register of Sasines (with certain exceptions now abolished by section 33 of the Conveyancing Act)—section 141. (8) Warrants of registration existing at the date of the Act are secured from challenge, either on the ground that the agent subscribing them has omitted his appropriate professional designation, or that he has subscribed the name of his firm—section 145. (9) Inhibitions are to take effect only from the date of registering them or a notice thereof; a short form of letters of inhibition, and a simple method of recalling or restricting an inhibition on a depending summons, are introduced; and no inhibition is to affect unentailed lands subsequently acquired—sections 155, 156, 157, and 158. (10) Lands are to become litigious only from and after the date of registering a notice of any signed summons affecting them—section 159. (11) The right of an heir-of-line to heirship moveables is abolished—section 160.

Most of the sections of the Act are merely re-enactments, with various slight alterations, of the corresponding sections of the repealed statutes. The following are the new sections, viz.—1, 2, 3 (partly), 4, 20, 21, 45, 46 (partly), 58, 67, 86 (partly), 96, 117, 125 (partly), 126, 127 (partly), 131, 133, 134, 137, 139, 140, 141, 145, 155, 156, 157, 158, 159, 160, and 163.

(c) The title and the preamble of the Act refer merely to heritable property and heritable rights. But the meaning of the subsequent enacting clauses, where clearly expressed, is not limited by the language of the title and the preamble. Thus section 149, which permits tested documents to be partly written and partly printed, expressly relates to “all documents whatever, mentioned or not mentioned, in this Act, and whether relating or not relating to land;” and section 139, which declares females of the age of fourteen or upwards to be competent instrumentary witnesses, has been held to render them competent witnesses to deeds dealing solely with moveables.—*Hannay, &c.*, Dec. 1, 1873, 1 *Rettie* 246.

1. Short Title.—This Act may be cited for all purposes as “The Titles to Land Consolidation (*Scotland*) Act 1868” (a).

(a) Several sections having been repealed, and amended sections substituted in their place, as above explained, p. 1, it is not sufficient to cite them as sections of the Consolidation Act merely. The proper mode of citation of sections 22, 24, 97, 118, 119, 130, and 141 is:—“Section 22” (or other section) “of ‘The Titles to Land Consolidation (*Scotland*) Act 1868,’ as repealed and re-enacted by section 2” (or other section) “of ‘The Titles to Land Consolidation

(Scotland) Amendment Act 1869.'” The following are the sections of the Amendment Act applicable to the above sections of the principal Act respectively:—

Section 2 repealing and re-enacting Section 22 of the principal Act.

”	3	”	”	24	”	”
”	5	”	”	97	”	”
”	6	”	”	118	”	”
”	7	”	”	119	”	”
”	8	”	”	130	”	”
”	9	”	”	141	”	”

Similarly, sections 125, 127, and 129 ought to be cited as sections of “The Titles to Land Consolidation (*Scotland*) Act 1868,” as repealed and re-enacted by the respective sections (*viz.*, 63, 64, and 65) of “The Conveyancing (*Scotland*) Act 1874.” Section 62, having undergone a double amendment, ought to be cited as section 62 of the Act of 1868, and section 4 of the Act of 1869, as repealed and re-enacted by the Act of 1874. See note to section 1 of the Conveyancing Act.

2. Commencement of Act.—This Act shall take effect from and after the thirty-first day of *December* One thousand eight hundred and sixty-eight (*a*), unless in so far as it is herein appointed to take effect at an earlier date (*b*).

(*a*) The Act was passed on 31st July 1868, but its operation was thus postponed for five months, in order to allow sufficient time for its provisions to become generally known.

(*b*) Two provisions of the Act are appointed to take effect from and after the passing of the Act (31st July 1868), *viz.*, section 46, which, *inter alia*, confers a personal right to lands on “any person who shall be in life at the passing of this Act,” from the date of recording in Chancery a decree of special service in his favour; and section 160, which abolishes, “from and after the passing of this Act,” the claim of an heir-of-line to heirship moveables. Other two provisions have an indefinitely retrospective effect, *viz.*, section 139, which declares that it shall not be competent to challenge any deed, “whether executed before or after the passing of this Act,” on the ground that any instrumentary witness was a female person; and section 145, which declares that it shall not be competent to challenge the validity of any existing warrants of registration on certain grounds. Section 9, which, however, merely re-enacts with slight alterations the provisions of the previous statutes authorising conditions of entail to be inserted by reference merely, in conveyances of entailed lands, applies to all such conveyances, whether dated prior or subsequent to the commencement of the Act. Section 117, which renders heritable securities moveable as regards the succession of the creditor therein, has been held not to have a retrospective effect so as to

regulate the succession of a creditor who died intestate in June 1868, and whose heir-at-law died in January 1869 without having made up any title. *Brown v. Macdonald*, 28th Jan. 1870, 8 Macph. 439.

Where the provisions of previous statutes have been re-enacted, the date at which such provisions first came into operation will be found stated in the notes to the section re-enacting them.

3. Interpretation of Terms (a).—The following words and expressions in this Act, and in the schedules annexed to this Act, shall have the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; that is to say—

- (1) The words “Superior,” “Vassal,” “Grantor,” “Grantee,” “Disposer,” “Disponee,” “Legatee,” “Adjudger,” and “Purchaser,” shall extend to and include the heirs, successors, and representatives of such superior, vassal, grantor, grantee, disposer, disponee, legatee, adjudger, or purchaser respectively; and the word “Successors” shall extend to and include heirs, disponees, assignees legal as well as voluntary, executors, and representatives:
- (2) The word “Month” shall mean calendar month:
- (3) The words “Sheriff of Chancery” shall extend to and include the Sheriff of Chancery and his Substitute under this Act, or under the Act of the Tenth and Eleventh *Victoria*, chapter forty-seven; and the word “Sheriff” shall extend to and include the Sheriff and Steward of any county or stewartry and his Substitute, and the Sheriff of Chancery and his Substitute:
- (4) The words “Sheriff-Clerk of Chancery” shall extend to and include the sheriff-clerk of Chancery acting under this Act, or who acted under the Act of the Tenth and Eleventh *Victoria*, chapter forty-seven, and the depute of such sheriff-clerk; and the words “Sheriff-Clerk” shall extend to and include the sheriff-clerk of Chancery and the

sheriff-clerk and steward-clerk of any county or stewartry and their respective deputes :

- (5) The words "Crown Writ" shall extend to and include all charters, precepts, and writs from Her Majesty, and from the Prince ; and the word "Crown" shall extend to and include Her Majesty and the Prince ; the words "Her Majesty" shall extend to and include Her Majesty and her royal successors ; and the word "Prince" shall extend to and include the Prince and Steward of *Scotland* and his successors :
- (6) The word "Charter" and the word "Writ" shall each extend to and include all Crown writs, and all charters, precepts, and writs from subject superiors :
- (7) The word "Deed" and the word "Conveyance" shall each extend to and include all charters, writs, dispositions, whether containing a warrant or precept of sasine or not, and whether *inter vivos* or *mortis causa*, and whether absolute or in trust, feu-contracts, contracts of ground-annual, heritable securities, reversions, assignations, instruments, decrees of constitution relating to land to be afterwards adjudged, decrees of adjudication for debt, and of adjudication in implement, and of constitution and adjudication combined, whether for debt or implement, decrees of declarator and adjudication, decrees of sale, and decrees of general and of special service, whether such decrees contain warrant to infeft or precept of sasine or not, and the summonses, petitions, or warrants on which any such decrees proceed, warrants to judicial factors, trustees, or beneficiaries of a lapsed trust, to make up titles to lands and the petitions on which such warrants proceed, writs of acknowledgment, contracts of excambion, deeds of entail, procuratories of resignation *ad remanentiam*, and all deeds,

decrees and writings by which lands, or rights in lands, are constituted or completed or conveyed or discharged, whether dated, granted, or obtained before or after the passing of this Act, and official extracts of all deeds and conveyances; and all codicils, deeds of nomination, and other writings annexed to or endorsed on deeds or conveyances or bearing reference to deeds or conveyances separately granted, and decrees of declarator naming or appointing persons to exercise or enjoy the rights or powers conferred by such deeds or conveyances, shall be deemed and taken for the purposes of this Act to be parts of the deeds or conveyances to which they severally relate, and shall have the same effect in all respects as to the persons so named and appointed as if they had been named and appointed in the deeds or conveyances themselves :

- (8) The words "Deed of Entail" shall extend to and include all deeds and conveyances of lands under the fetters of a strict entail, and all procuratories, bonds, and contracts by which lands are settled under such fetters :
- (9) The word "Instrument" shall extend to and include all notarial instruments authorised by this Act, or by any of the Acts hereby repealed, and also all instruments of sasine, instruments of resignation *ad remanentiam*, instruments of resignation and sasine, and instruments of cognition and sasine, and instruments of cognition :
- (10) The words "Heritable Security" and "Security" shall each extend to and include all heritable bonds, bonds and dispositions in security, bonds of annual-rent, bonds of annuity, and all securities authorised to be granted by the seventh section of the Act of the Nineteenth and Twentieth *Victoria*, chap-

Page 8, top.

the words "Heritable Security" and "Security" do not include or extend to mortgages over land in England. — *Monteith v. Monteith's Trs.*, June 3, 1882, 19 Scot. Law Rep. 740, and 9 R. 982. The rubric of the latter report is misleading; see addition to note (1) *post*, p. 225. As to securities over recorded leases, see marginal note, *post*, 447.

ter ninety-one, intituled *An Act to amend and re-enact certain Provisions of an Act of the Fifty-fourth year of King George the Third relating to Judicial Procedure and Securities for Debts in Scotland*, and all deeds and conveyances whatsoever, legal as well as voluntary, which are or may be used for the purpose of constituting or completing or transmitting a security over lands or over the rents and profits thereof, as well as such lands themselves and the rents and profits thereof, and the sums, principal, interest, and penalties secured by such securities, but shall not include securities by way of ground-annual, whether redeemable or irredeemable, or absolute dispositions qualified by back bonds or letters :

- (11) The word "Creditor" shall extend to and include the party in whose favour an heritable security is granted, and his successors in right thereof :
- (12) The word "Debtor" shall include the debtor and his successors :
- (13) The word "Lands" shall extend to and include all heritable subjects, securities, and rights :
- (14) The words "Notary Public" shall be held to mean a notary public duly admitted to practice in *Scotland* :
- (15) The word "Petitioner" shall extend to and include any person who may have presented or may present a petition within the meaning of this Act, or of any Act hereby repealed :
- (16) The words "Judicial Factor" shall extend to and include judicial factors or *curators bonis* to persons under incapacity, factors *loco tutoris*, factors *loco absentis*, and all judicial managers :
- (17) The words "Infeft" and "Infeftment" shall extend to and include the due registration, in the appropriate register of sasines, of any deed or conveyance, whether before or after the commencement of this Act, by which registration a real right to lands has been or shall be constituted.

(a) Most of the statutes consolidated by the present Act contained interpretation clauses, none of which, however, were so full and comprehensive as the above. Any remarks requiring to be made on the interpretation of the various words above mentioned will be found in the notes to the sections in which these words occur.

The paragraphs into which the above section is divided are not numbered in the Act itself, but for facility of reference they have been here printed with consecutive numbers prefixed to them.

The following is a list, alphabetically arranged, of the words above interpreted, with a numeral appended to each showing the No. of the paragraph in which the interpretation is given:—

Adjudger, 1.	Instrument, 9.
Charter, 6.	Lands, 13.
Conveyance, 7.	Legatee, 1.
Creditor, 11.	Month, 2.
Crown, 5.	Notary Public, 14.
Crown Writ, 5.	Petitioner, 15.
Debtor, 12.	Prince, 5.
Deed, 7.	Purchaser, 1.
Deed of Entail, 8.	Security, 10.
Disponee, 1.	Sheriff, 3.
Disponer, 1.	Sheriff of Chancery, 4.
Grantee, 1.	Sheriff-Clerk, 4.
Grantor, 1.	Sheriff-Clerk of Chancery, 4.
Her Majesty, 5.	Successors, 1.
Heritable Security, 10.	Superior, 1.
Infest, 17.	Vassal, 1.
Infestment, 17.	Writ, 5.

4. *Acts specified in Schedule (A.) repealed.*—From and after the commencement of this Act (a), the several Acts and part of Act set forth in Schedule (A. No. 1.) to this Act annexed (b), to the extent to which such Acts or part of Act are by such Schedule expressed to be repealed, and every other Act or Acts, and such parts of every other Act or Acts, as shall be inconsistent with this Act, shall be and the same are hereby repealed (c): Provided always that such repeal shall not be construed to lessen or affect any right to which any person may at the time of such repeal be entitled under the said Acts or part of Act, or to lessen or affect any liability then existing thereunder, or to invalidate or affect anything done prior to the passing hereof (d) in pursuance of the

said Acts or part of Act, or to revive or render necessary any deed, form, procedure, or practice by said Acts or part of Act repealed, abolished, or rendered unnecessary (*e*); and provided also that any right to lands (*f*) constituted or acquired under said Acts or part of Act may be completed, transferred, or extinguished either under the same or under this Act (*g*).

(*a*) That is to say, from and after 31st December 1868. See section 2, p. 4.

(*b*) The Schedule, containing a complete list of the Acts repealed, is herein printed at p. 12. These Acts, which were passed between 1845 and 1860, substantially carried into effect the recommendations contained in the third report of the Royal Commissioners appointed in 1837 to inquire, *inter alia*, "as to the forms now used for the completion of heritable rights, and the expediency of changing these forms with a view to cheapness and security."

(*c*) As already explained at p. 2, the object of the Act is effected by the repeal of the Acts intended to be consolidated, and the re-enactment of their provisions with various alterations and additions. Only one section of the Infestment Act of 1845 is repealed; but for the sake of convenience of reference, the Consolidation Act being practically a code of conveyancing statutes, the whole of the Infestment Act is included in Schedule (A.), No. 2 (p. 14), with a marginal marking showing that the repeal is limited to section 6, which relates to the obsolete precept from chancery. "The reason for retaining this Act on the statute book in its original form was, that although the more recent Acts, including the Consolidation Act, have rendered the instrument of sasine unnecessary, they have not abolished it; and as the Act of 1845 had introduced a short and improved form of that instrument, it was desirable to retain that form. But it would obviously have been absurd to have included in a statute which was intended to render sasine unnecessary a series of provisions and schedules regulating the forms and mode of giving sasine. In order, however, that any conveyancer desiring to have recourse to the forms enacted by the Act of 1845 may have its provisions before him along with those which are henceforth to be generally used, the whole of that Act has been included in Schedule (A), No. 2, of the present Act, with a marginal marking at section 6 thereof to show that the repeal is limited to that section."—*Marshall's Analysis*, p. 8.

(*d*) This seems a mistake. The words should have been "prior to the commencement hereof," instead of "prior to the passing hereof." But the mistake is probably of no importance, as the whole of the proviso in which it occurs appears to be superfluous.

(e) By section 163 it is further provided that “notwithstanding the repeal of the said Acts the same shall be held to be still in force so far as regards any reference which may be made to them or any of them in any statute not hereby repealed, and to the effect of giving full effect to such reference.”

(f) Including all heritable subjects, securities, and rights. See section 3, par. 13, *ante*, p. 8.

(g) Provision is here made for three separate cases:—(1) Where a right to heritable subjects or securities has been constituted or acquired under the Acts now repealed, but the title thereto has not been completed before the commencement of the Consolidation Act, then it may be *completed* under either the said Acts or the present Act. For example, where a conveyance or a bond and disposition in security has been granted before, but infestment thereon has been delayed till after the commencement of the Act, then such infestment, whether by sasine, notarial instrument, or registration, may be taken either in the forms prescribed by the Acts now repealed or in those prescribed by the present Act. What is here said as to infestment applies equally to charters or writs of confirmation or resignation obtained prior to 1st October 1874, since which date they have been rendered incompetent by section 4 of the Conveyancing Act. (2) Where such a right has been so constituted or acquired, whether the title thereto has been completed or not, it may be *transferred* either under the said Acts or under the present Act. For example, a heritable security constituted before the commencement of the Act may be assigned either in the forms prescribed by the said Acts or in those prescribed by the present Act. A conveyance on which infestment has not been taken may similarly be assigned, either in the forms of the repealed Acts or in those of the present Act; but it may be doubted whether the right constituted by a conveyance on which infestment has been taken before the commencement of the Act was intended to be transferable in the old forms. The words of the proviso, however, seem wide enough to include even this case. (3) Where such a right has been so constituted or acquired, it may be *extinguished* either under the said Acts or under the present Act. For example, a heritable security constituted before the commencement of the Act may be discharged either in the forms of the repealed Acts or in those of the present Act.

Conveyancers will probably not take advantage purposely of the option given by this proviso, the effect of which, however, may be to exclude technical objections to the use of forms slightly different from those prescribed by the Consolidation Act.

It may be here pointed out that section 163 provides that nothing contained in the Act shall prevent the constitution, transmission, completion, or extinction of land rights, or of securities affecting lands, in the forms which were in use or competent for these purposes prior to the passing of the repealed Acts. The Conveyancing Act, however, renders several of these no longer competent.

SCHEDULE (A.)

No. 1.

Acts and Part of Act repealed.

Date of Act.	Title.	Extent of Repeal.
8 & 9 Vict. c. 31. (a)	An Act to facilitate the Transmission and Extinction of Heritable Securities for Debt in Scotland.	The whole.
8 & 9 Vict. c. 35. (b)	An Act to simplify the Form and diminish the Expense of obtaining Infertment in Heritable Property in Scotland.	Section Sixth in the Copy No. 2 of this Schedule.
10 & 11 Vict. c. 47. (c)	An Act to amend the Law and Practice in Scotland as to the Service of Heirs.	The whole.
10 & 11 Vict. c. 48. (d)	An Act to facilitate the Transference of Lands and other Heritages in Scotland not held in Burgage Tenure.	The whole.
10 & 11 Vict. c. 49. (e)	An Act to facilitate the Transference of Lands and other Heritages in Scotland held in Burgage Tenure.	The whole.
10 & 11 Vict. c. 50. (f)	An Act to facilitate the Constitution and Transmission of Heritable Securities.	The whole.

10 & 11 Vict. c. 51. (<i>g</i>)	ties for Debt in Scotland, and to render the same more effectual for the recovery of Debts. An Act to amend the practice in Scotland with regard to Crown Charters and Precepts from Chancery.	The whole.
13 & 14 Vict. c. 13. (<i>h</i>)	An Act to render more simple and effectual the Titles by which Congregations or Societies associated for Purposes of Religious Worship or Education in Scotland hold Real Property required for such Purposes.	The whole.
17 & 18 Vict. c. 62. (<i>i</i>)	An Act to extend the Benefits of Two Acts of Her Majesty relating to the Constitution, Transmission, and Extinction of Heritable Securities in Scotland.	The whole.
21 & 22 Vict. c. 76. (<i>k</i>)	An Act to simplify the Forms and diminish the Expense of completing Titles to Land in Scotland.	The whole.
23 & 24 Vict. c. 143. (<i>l</i>)	An Act to extend certain Provisions of The Titles to Land (Scotland) Act, 1858, to Titles to Land held by Burgage Tenure, and to amend the said Act.	The whole.

No. 2.

8 & 9 VICT.

CAP. XXXV.

An Act to simplify the Form and diminish the Expense of obtaining Infestment in Heritable Property in Scotland.—[21st July 1845.]

How Sasine to be given in future.—Whereas it is expedient to simplify the form and diminish the expense of obtaining infestment in heritable property in Scotland : Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the 1st day of October in the present year 1845 it shall not be necessary to proceed to the lands in which sasine is to be given, or to perform any act of infestment thereon, but sasine shall be effectually given therein and infestment obtained by producing to a notary public the warrants of sasine and relative writs, as now in use to be produced at taking infestment, and by expediting and recording in the general register of sasines, or the particular register of sasines applicable to the land contained in the warrant of infestment, in manner herein-after directed, an instrument of sasine, setting forth that sasine had been given in the said lands, and subscribed by the said notary public and witnesses, according to the form and as nearly as may be in the terms of Schedule (B.) hereto annexed ; and such form of infestment shall be effectual whether the lands lie contiguous or discontiguous, or are held by the same or by different titles, or of one or more superiors, or

whether the deed entitling the party to obtain infeftment be dated prior or subsequent to the present Act, or whether the precept of sasine therein be in the form heretofore in use or in the form authorised by the present Act (*m*).

2. *Instruments of Sasine to be entered and recorded.*—And be it enacted, That from and after the said 1st day of October every such instrument of sasine shall be recorded in manner heretofore in use with regard to instruments of sasine, and the keepers of the registers of sasines are hereby required to receive and register the same accordingly; and such instrument of sasine being so recorded, shall in all respects have the same effect as if sasine had been taken and an instrument of sasine duly recorded according to the law and practice heretofore in use (*u*).

3. *May be recorded at any time, but the date of the presentment to be the date of the Infeftment.*—And be it enacted, That from and after the said 1st day of October every such instrument of sasine may be competently and effectually recorded at any time during the life of the party in whose favour such instrument has been expedite, but the date of presentment and entry set forth on any such instrument by the keeper of the record shall be taken to be the date of the instrument of sasine and infeftment.

4. *In case of Error or Defect another Instrument may be recorded.*—And be it enacted, That in case of any error or defect in any such instrument of sasine, or in the recording thereof, it shall be competent of new to make and record an instrument of sasine, which shall have effect from the date of the recording thereof, as if no previous instrument or instruments had been made or recorded.

5. *Forms of the Precept and Instrument of Sasine.*—And be it enacted, That in all deeds containing a pre-

cept of sasine such precept may be in the form and as nearly as may be in the terms of the Schedule (A.) hereto annexed, and the instrument of sasine on any such deed shall be in the form and as nearly as may be in the terms of the said Schedule (B.) hereto annexed, which precepts and instruments of sasine respectively shall be as valid and effectual as the precepts and instruments of sasine heretofore in use.

6. *Precept from Chancery to be issued to Notaries upon payment of Retour Duties and Casualties—Fees to be paid to Sheriffs and Sheriff-Clerks for a limited period.*—And be it enacted, That where infeftment is to be completed under a precept issuing from the office of Chancery, which precept has hitherto been directed to the Sheriff of the county in which the lands or some part thereof lie, such precept shall, after the said first day of October, be addressed to any notary-public: Provided always that such precept shall be null and void unless an instrument of sasine thereon be recorded in the general register of sasines, or the register of sasines applicable to the lands therein contained, before the first term of Whitsunday or Martinmas posterior to the date of such precept, without prejudice to a new precept being issued as heretofore, and that before such precept is issued from Chancery the retour duties and casualties due to the Crown shall be paid to the proper officer there, who shall account to the Exchequer for the same in like manner as the Sheriffs were wont to do; and the same officer shall also receive at the same time certain fees on behalf of the Sheriffs, Sheriffs Substitute, and Sheriff Clerks of the counties in which the lands lie, and on which sasine would have been taken according to the form heretofore in use, and to whom such officer shall account for the same, in place of the fees which they have heretofore been in use to receive, but such fees shall be paid only during the existence of the respective interests of the present Sheriffs, Sheriffs Substitute, and Sheriff Clerks in their respective offices; and the Lords of Council and Session are hereby authorised and required, by an Act or Acts of Sederunt, to regulate and determine the amount of the fees to be so received on behalf of each Sheriff, Sheriff Substitute, and Sheriff Clerk, having due regard to the existing interest of each (n).

7. *Forms of Burgage Sasines to continue as at present.*—And whereas it is not hereby intended to make any alterations in the law with regard to instruments of sasine and instruments of cognition, and sasine of subjects held burgage, or by any similar mode of tenure known and effectual in law, excepting as after specified; be it enacted, That the forms and modes of registration of these instruments shall continue the same as at present, excepting only that the same shall be valid and effectual, if attested by the town clerk as a notary, without the addition of his docquet, and by the witnesses, and that the delivery of symbols may lawfully be given, either on the ground of the subjects as heretofore, or within the council chamber of the burgh by delivery of a pen (o).

8. *Instruments of Resignation ad remanentiam regulated.*—And be it enacted, That the instruments of resignation *ad remanentiam* shall be written in the same form as at present, but it shall be unnecessary for the notary public to adhibit his long docket to such instruments; and further, that all resignations *ad remanentiam* may be accepted by the superior himself, or on his behalf, by his known agent for the time, or by any person having a formal commission for that purpose (*p*).

9. *Instruments of Resignation in favorem abolished.*—And whereas instruments of resignation *in favorem*, as separate instruments intended merely to connect the procuratory with the charter of resignation, are now rarely used in practice, and are wholly unnecessary (*q*); be it enacted, That from and after the said 1st day of October the same shall be and are hereby abolished: Provided always that the deduction of titles required by the Act of the Parliament of Scotland made in the year 1693, intituled “Act anent Procuratories of Resignation and Precepts of Seisin,” to be made in such instruments, shall from and after the date of this Act be made in the charter of resignation (*r*).

10. *Interpretation of Act.*—And be it enacted, That in the construction of this Act the words “Notary Public” shall be held to mean a notary public in Scotland duly admitted and practising there; the word “Deed” shall be held to include any warrant or document upon which sasine may follow; and the word “Lands,” or the words “Heritable Property,” shall be held to include houses, fishings, mills, minerals, patronages, teinds, and in general all heritable subjects or rights in which infeftment may be taken; and all words in the singular number shall be held to include a plurality of persons or things; and in general this Act shall be construed in the most liberal manner, so as to accomplish the objects thereby intended.

11. *Alteration of Act.*—And be it enacted, That this Act may be amended or repealed by any Act to be passed in the present session of Parliament (*s*).

SCHEDULES REFERRED TO IN THE FOREGOING ACT.

SCHEDULE (A.)

Form of Precept of Sasine.

Moreover I desire any notary public to whom these presents may be presented to give to the said *A.B.* or his foresaids sasine [*or liferent sasine, or sasine in life-rent and fee respectively, as the case may be,*] of the lands and others above disposed [*if the deed be granted under the burden of a real lien or servitude, or any other incumbrance, condition, or qualification of the right, or under redemption, then there will be added here, "but always under the burden of the real lien," &c. (as the case may be) before specified*]. In witness whereof, &c. [*here insert a testing clause in legal form*]. (t)

SCHEDULE (B.)

Form of Instrument of Sasine (u).

At _____ there was, by or on behalf of *A.B.* of *Z.*, Esquire, presented to me, notary public subscribing, a disposition [*or other deed, or an extract of a deed (as the case may be)*] granted by *C.D.* of *Y.*, Esquire, and bearing date as in the precept of sasine hercin-after inserted [*here describe also any connecting deed or writ, or extract thereof, in virtue of which the sasine is to be given to A.B.*], by which disposition the said *C.D.* sold, alienated, and disposed to the said *A.B.* [*or, to E.F. (as the case may be)*], and his heirs and assignees [*here insert the destination, if any*], heritably and irredeemably [*or redeemably, or in liferent, or otherwise (as the case may be)*], All and Whole [*here insert the description of the subjects conveyed; and if the disposition by C.D. was not to A.B. himself, but is vested in him as assignee, heir, or adjudger, or otherwise, in whole or in part,*

state the successive transferences, and the way in which he has right thereto], which disposition contains an obligation to infest [*here state whether a se or de se, or both or either (as the case may be),*] and a precept of sasine in the following terms [*here insert the precept, which may be either according to the form at present in use, or according to the abbreviated form in Schedule (A.)*], in virtue of which precept I hereby give sasine [*or liferent sasine, or sasine in liferent and fee respectively*] to the said *A.B.* of the lands and others above described. [*If the precept of sasine contains a reference to a real burden, or to any conditions or qualifications of the right, or to a power of redemption, then add, "but always under the burden of the real right, &c. before specified."*]

In witness whereof I have subscribed these presents, written on this and the preceding pages by *G.H.*, my clerk, before these witnesses, the said *G.H.* and *J.K.*, accountant in Edinburgh.

(Signed) *L. M.*, Notary Public.

G. H., witness.

J. K., witness.

(a) Passed on 30th June 1845, and taking effect from and after 1st October 1845.

(b) Passed on 21st July 1845, and taking effect from and after 1st October 1845.

(c) Passed on 25th June 1847, and taking effect from and after 15th November 1847.

(d) Passed on 25th June 1847, and taking effect from and after 30th September 1847.

(e) Passed on 25th June 1847, and taking effect from and after 30th September 1847.

(f) Passed on 25th June 1847, and taking effect from and after 30th September 1847.

(g) Passed on 25th June 1847, and taking effect from and after 1st October 1847.

(h) Passed on 17th May 1850, and taking effect from and after that date.

(i) Passed on 31st July 1854, and taking effect from and after that date.

(k) "The Titles to Land (*Scotland*) Act 1858," passed on 2d August 1858, and taking effect partly from and after that date, and partly from and after 1st October 1858. Owing to a blunder, only the first section was expressly postponed in its operation till the latter date; but as that section dispensed with the use of instruments of sasine, and as many of the succeeding provisions were dependent on that leading section, it was very difficult to say at which date the various sections took effect. The result was, that the legal profession did not take advantage of the provisions of the Act till 1st October 1858, which is accordingly assumed throughout this compendium to be the date at which the whole provisions of the Act took effect.

(l) "The Titles to Land (*Scotland*) Act 1860," passed on 28th August 1860, and taking effect from and after 1st October 1860.

(m) As to the changes effected by this statute on the law relating to infeftments, see Bell's Lectures on Conveyancing, 1st edition, p. 621. Instruments of sasine, whether in the old form or in the form introduced by this statute, are still competent; but they have been quite superseded by the shorter and less expensive modes of obtaining infeftment introduced by recent legislation, and it is difficult, if not impossible, to conceive of any case in which a conveyancer would now be justified in making use of an instrument of sasine. See also note (c) to section 4, *ante*, p. 10. The particular register of sasines is now abolished. See section 8 of the Land Registers Act of 1868, printed *post*.

(n) The precept from Chancery has been superseded by the Crown writ of *clare constat* introduced by section 11 of the Titles to Land Act of 1858, and now regulated by sections 84 and 85 of the Consolidation Act.

(o) By sections 25 and 26 of the Conveyancing Act the distinction between lands held burgage and lands held feu is abolished as regards, *inter alia*, the completion of titles, so that this section of the Infeftment Act may be regarded as virtually repealed from and after 1st October 1874.

(p) Instruments of resignation *ad remanentiam*—that is to say, notarial instruments reciting the surrender or return by a vassal of his feu to his superior, to remain permanently with the superior—are rendered unnecessary by section 18 of the Consolidation Act in the case of a conveyance containing an express clause of resignation *ad remanentiam*; and they appear to fall within the spirit, if not the letter, of section 4 of the Conveyancing Act, which renders incompetent charters, precepts, and other writs by progress. The purpose of resigna-

tion *ad remanentiam* is to consolidate or unite the property with the superiority of the lands resigned, and a simple mode of effecting this purpose is provided by section 6 of the Conveyancing Act. No conveyancer therefore would be justified in now making use of an instrument of resignation *ad remanentiam*. See also note to section 18 of the Consolidation Act.

Page 21, end of note (p).

But see marginal note thereto, *post*, p. 58.

(q) See Bell's Lectures on Conveyancing, 1st ed., pp. 642 and 710.

(r) Under section 4 of the Conveyancing Act charters and writs of resignation are not only unnecessary but also incompetent.

(s) This section is included in the repeals effected by "The Statute Law Revision Act, 1875," (38 and 39 Vict. c. 66).

(t) Under section 5 of the Consolidation Act it is unnecessary to insert in any conveyance a precept of sasine. But although infestment may be taken in the modern forms of registration or notarial instrument on a conveyance not containing a precept of sasine, an instrument of sasine cannot be competently expedited upon such a conveyance, seeing that a precept is the only warrant for the actual delivery of sasine.

(u) Recent legislation has rendered the instrument of sasine, even in the abbreviated form here introduced, quite obsolete, though still competent. See notes (m) and (t) *supra*.

If in any case the use of an instrument of sasine should be deemed justifiable, it ought to be borne in mind that it cannot now be recorded in the register of sasines without having a warrant of registration indorsed or written upon it. See section 141 of the Consolidation Act, and section 33 of the Conveyancing Act.

5. *In Conveyances of Land, &c. not held Burgage certain clauses may be inserted in the short Forms given in Schedule (B.) No. 1. (a)*—It shall not be necessary to insert in any conveyance of lands in *Scotland* not held by burgage tenure (b) a clause of obligation to infest (c), or a precept of sasine (d), or warrant of infestment (e); and in any conveyance of such lands in which all or any of the following clauses are necessarily or usually inserted (*videlicet*,) a clause declaring the term of entry, a clause expressing the manner of holding, a procuratory or clause of resignation (f), a clause of assignation of writs

and evidents, a clause of assignation of rents, a clause of obligation to free and relieve of feu duties and casualties due to the superior, and of public burdens, a clause of warrandice, a procuratory or clause of registration for preservation or for preservation and execution, it shall be lawful and competent to insert all or any of such clauses in the form or as nearly as may be in the form No. 1. of Schedule (B.) hereunto annexed; and all or any of such clauses, if so inserted in any such conveyance, or in any conveyance dated after the 30th day of September 1847 (*g*), shall have the meaning and effect assigned to them in the sixth and eighth sections of this Act, and shall be as valid, effectual, and operative, to all intents, effects, and purposes, as if the same had been expressed in the fuller mode or form generally in use prior to the said 30th day of September 1847 (*g*).

(*a*) This section re-enacts, with verbal alterations, provisions contained in 10 and 11 Vict. c. 48, section 1 (with reference to the short forms of clauses), which took effect from and after 30th September 1847, and 21 and 22 Vict. c. 76, section 5 (dispensing with the clause of obligation to infeft, the precept of sasine, and the warrant of infeftment), which took effect from and after 1st October 1858.

The object of this section is merely to abbreviate the old forms of conveyances.

(*b*) The words "not held by burgage tenure" may now be held as *pro non scriptis*, as section 25 of the Conveyancing Act abolishes the distinction between estates in land held burgage and estates in land held feu, *inter alia*, "in so far as regards the conveyances relating thereto."

(*c*) As to the purpose of the obligation to infeft, see Bell's Lectures on Conveyancing, first edition, p. 639.

The Act 10 and 11 Vict. c. 48, provided in Schedule (A) a short form of this clause; but as that Act is repealed by the Consolidation Act, which of course gives no form of a clause that it renders unnecessary, the obligation to infeft, if ever used, must be in the old form, which will be found at p. 100 of the Juridical Styles, vol. i., third edition.

(*d*) If a conveyance contains no precept of sasine, infeftment cannot be taken by means of the now obsolete instrument of sasine. See note (*t*), *ante*, p. 21.

(e) The warrant of infeftment was a clause introduced by 10 and 11 Vict. c. 48, section 19, into decrees of adjudication and decrees of sale, authorising any notary public to give sasine to the adjudger or purchaser. That Act having, however, been repealed by the Consolidation Act without the re-enactment of any similar provision, the warrant of infeftment is now not merely unnecessary but incompetent. Its object is now attained by the registration of the decree. See section 62 of the Conveyancing Act.

(f) Section 4 of the Conveyancing Act, by abolishing charters and writs by progress, renders entry by resignation incompetent; and a procuratory or clause of resignation is consequently useless in a conveyance. Section 26 of the Conveyancing Act specially provides that if a procuratory or clause of resignation is inserted in a conveyance of land formerly held burgage, it shall be held *pro non scripto*.

(g) That is to say, the date from and after which 10 and 11 Vict. c. 48 (the statute that first introduced the short forms of the clauses here mentioned) took effect. As to the fuller modes or forms generally in use prior to that date, see Juridical Styles, third edition, vol. i., p. 100.

SCHEDULE (B.)

No. 1.

Formal Clauses of a Disposition of Land, &c.

not held burgage (a).

[*After the inductive and dispositive clauses (b) the deed may proceed thus:*] With entry at the term of [*here specify the date of entry*] (c): to be holden the said lands and others [*or subjects*] a me [*or a me vel de me, as the case may be (d)*]; and I resign the said lands and others [*or subjects*] for new infeftment or investiture (e); and I assign the writs, and have delivered the same according to inventory (f); and I assign the rents; and I bind myself to free and relieve the said disponee and his foresaids of all feu-duties, casualties, and public burdens; and I grant warrandice (g); and I consent to registration hereof for preservation [*or for preservation and execu-*

tion] (*h*). In witness whereof [*insert a testing clause in the usual form*] (*i*).

NOTE.—The clauses are assumed here as occurring in a disposition, but they may be used in other deeds and conveyances; and in the event of it being necessary to omit, vary, or qualify any one or more of them, this may be done, and the other clauses may be retained.

(*a*) This form may now be used in a conveyance of land which has been held burgage. See note (*b*), *ante*, p. 22.

(*b*) The word “dispone” is no longer essential in the dispositive clause. See section 20 of the Consolidation Act, and section 27 of the Conveyancing Act.

(*c*) Before this short form was introduced by 10 and 11 Vict. c. 48, the term of entry was set forth in the clause of obligation to free the subjects of public burdens, &c. See *Juridical Styles*, 3d ed., vol. i., p. 101.

Section 28 of the Conveyancing Act provides that where no term of entry is stated, the entry shall be at the first term of Whitsunday or Martinmas after the date or last date of the conveyance, unless it shall appear from the terms of the deed that another term of entry was intended.

(*d*) The clause expressing the manner of holding comes in place of the old clause of obligation to infeft.

As to the import of this clause, see section 6 of the present Act.

There is now no need to specify the manner of holding unless the holding is to be *de me*.

(*e*) This clause is now useless. See note (*f*), *ante*, p. 23.

(*f*) When the inventory of writs is annexed to the disposition, an additional stamp is in no case required, progressive stamps having been abolished by the Stamp Act of 1870; but when it is written separately it must still be impressed with a stamp of 10s.

(*g*) As to the import of these short clauses, see section 8 of the present Act.

(*h*) As to the import of this clause, see section 138 of the present Act.

(i) As to the requisites of the testing clause, see section 38 of the Conveyancing Act.

6. Import of clause expressing manner of holding. (a)
 —If the lands have been or shall be conveyed to be holden *a me* only, the clause so expressing the manner of holding shall imply that the lands are to be holden from the grantor of and under his immediate lawful superiors, in the same manner as the grantor or his predecessors or authors held, hold, or might have holden the same, and that the title of the disponee may be completed either by resignation or confirmation, or both, the one without prejudice of the other (b); and if the lands shall be disposed to be holden *a me vel de me* (c), the clause so expressing the manner of holding shall imply that the lands are either to be holden of the grantor in free blench for payment of a penny *Scots* in name of blench farm, at *Whitsunday* yearly, upon the ground of the lands, if asked only, and freeing and relieving the grantor of all feu duties and other duties and services exigible out of the said lands by his immediate lawful superiors thereof, or to be holden from the grantor of and under his immediate lawful superiors, in the same manner as the grantor or his predecessors or his authors held, hold, or might have holden the same, and that the title of the disponee may be completed either by resignation or confirmation, or both, the one without prejudice of the other (b); and where no manner of holding is expressed, the conveyance shall be held to imply that the lands are to be holden in the same manner as if the conveyance contained a clause expressing the manner of holding to be *a me vel de me* where the titles of the lands contain no prohibition against subinfeudation, or against an alternative holding (d), and as if the conveyance contained a clause expressing the manner of holding to be *a me*, where the titles contain such prohibitions, or either of them (e): Provided always that where the said titles contain such prohibitions, or either of them, the conveyance shall, if an entry in the lands therein specified or thereby conveyed be expedite with the superior within twelve months from the date of such conveyance, have the same preference in all respects from the date of recording the conveyance or any instrument thereon in the appropriate register of sasines as if such conveyance contained a clause expressing the manner of holding to be *a me vel de me*, and the titles did not contain any prohibition against subinfeudation or against an alternative holding (f): And provided always, that nothing contained in this Act shall be construed to take away or impair any of the rights and remedies competent to a superior against his vassal lying out unentered (g).

(a) This section re-enacts, with verbal alterations, provisions con-

tained in 21 and 22 Vict. c. 76, sec. 5, which took effect from and after 1st October 1858, as more fully explained by 23 and 24 Vict. c. 143, sec. 36 (with reference to the case of a prohibition against subinfeudation), which took effect from and after 1st October 1860. The import of the now obsolete obligation to infest was similarly explained by 10 and 11 Vict. c. 48, which took effect from and after 30th September 1847.

The words here used to express the import of the short statutory clause are just the words of the fuller clauses that were used before the passing of these statutes. See the Juridical Styles, 3d ed., vol. i., p. 100.

This section does not provide for the case of lands conveyed to be holden *de me* only—that is to say, the case of lands conveyed in an original charter or feu-disposition; for this reason, that in such a case it is for the contracting parties themselves to settle what the terms of the holding shall be.

(b) As infestment now implies entry with the superior (under section 4 of the Conveyancing Act), the title of the disponee neither requires nor admits of further completion.

(c) Under section 4 of the Conveyancing Act a clause expressing the holding to be *a me vel de me* has no effect, as it cannot put the disponee into any better position than he would be in if the holding were declared to be *a me* or if no manner of holding were expressed. The object of an alternative holding was to enable a disponee to make his right effectual by taking infestment without immediately requiring to obtain an entry from the superior, his holding being deemed to be of the disponer from the date of his infestment till his entry with the superior, after which it was deemed to be of the superior. But infestment now implies entry as at the date of the infestment, whether the holding is declared alternative or *a me*, so that there is no period during which the disponee's holding can be deemed to be otherwise than of the superior. The result is that an alternative holding is now impossible.

(d) As an alternative holding is not designed to create a permanent base right, it is not a contravention of a prohibition against subinfeudation. *Colquhoun v. Walker*, 17th May 1867, 5 Macph. 773. Section 22 of the Conveyancing Act renders incompetent any prohibition made from and after 1st October 1874 against subinfeudation or against an alternative holding. But this enactment does not in any way affect deeds executed before that date.

(e) See note (c) *supra*.

(f) The object of this proviso was to give a certain amount of security to a purchaser of lands held under such prohibitions, against the risk of a second or fraudulent sale by the vendor. The holding

being in such cases *a me*, the purchaser's infestment on the conveyance was worthless till confirmed by the superior, and but for this proviso the purchaser's right might be entirely defeated by a second purchaser *in bona fide* obtaining confirmation first. Now, however, the proviso is needless and inoperative, seeing that under section 4 of the Conveyancing Act infestment implies confirmation, so that in every case the preference depends upon priority of recording in the register of sasines.

(g) Section 4 of the Conveyancing Act abolishes non-entry, but provides a new process for recovering payment of casualties.

7. *In Conveyances of Burgage Property certain clauses may be inserted in the Forms given in Schedule (B.) No. 2 (a).*—It shall not be necessary to insert in any conveyance of lands in *Scotland* (b) held by burgage tenure (c) a clause of obligation to infest, or a procuratory or clause of resignation(d); and every conveyance of such lands shall imply that the lands thereby conveyed are to be holden of Her Majesty in free burgage, for service of burgh used and wont (e); and in any conveyance of such lands in which all or any of the following clauses are necessarily or usually inserted (*videlicet*,) a clause declaring the term of entry, a clause of obligation to free and relieve of ground annual, cess, annuity, and other public burdens, a clause of assignation of rents, a clause of assignation of writs and evidents, a clause of warrandice, and a clause of registration for preservation and execution, it shall be lawful and competent to insert all or any of such clauses in the form or as nearly as may be in the form No. 2 of Schedule (B.) hereto annexed; and all or any of such clauses, if so inserted in any such conveyance, or in any similar conveyance dated after the 30th day of *September* 1847 (f), shall have the meaning and effect assigned to them in the eighth section of this Act, and shall be as valid, effectual, and operative to all intents and purposes as if they had been expressed in the fuller mode or form generally in use prior to the said 30th day of *September* 1847 (f).

(a) This section merely re-enacts, with one unimportant addition, the provisions of 10 and 11 Vict. c. 49, sec. 1 (with reference to the

short forms of clauses), which took effect from and after 30th September 1847, and 23 and 24 Vict. c. 143, sec. 6 (dispensing with the clause of obligation to infeft and procuratory or clause of resignation), which took effect from and after 1st October 1860.

The object of this section is merely to abbreviate the old forms of conveyances of burgage subjects.

Section 25 of the Conveyancing Act abolishes the distinction between estates in land held burgage and estates in land held feu, *inter alia*, "in so far as regards the conveyances relating thereto;" but section 26 permits conveyances of land hitherto held burgage to be either in the forms allowed by the Consolidation Act in regard thereto or in the forms applicable to lands held feu.

(b) The abolition of the distinction between burgage and feu renders it necessary to hold, as here inserted, the word "formerly."

(c) Including lands in the burgh of Paisley held by the peculiar tenure of booking.—Section 152 of the Consolidation Act, and sections 25 and 26 of the Conveyancing Act.

(d) Section 26 of the Conveyancing Act provides not merely that it shall not be necessary to insert a procuratory or clause of resignation, but that such procuratory or clause if inserted shall be held *pro non scripto*.

(e) As section 25 of the Conveyancing Act empowers proprietors of lands previously held burgage to grant feus, not every conveyance of such lands will now imply that the lands are to be holden of Her Majesty for service of burgh used and wont. This, however, will be still implied in every conveyance in which the manner of holding is not expressed to be *de me*.

(f) That is to say, the date from and after which 10 and 11 Vict. c. 43 (the statute that first introduced into conveyances of burgage subjects the short forms of the clauses here mentioned) took effect. As to the fuller form of conveyance generally in use prior to that date, see *Juridical Styles*, 3d ed., vol. i., p. 604.

SCHEDULE (B.)

No. 2.

Formal Clauses of a Disposition of Land, &c., (a) held Burgage (b).

[After the inductive and dispositive clauses the deed may proceed thus:] With entry at the term of [here specify the date of entry]: to be holden the said lands and others [or subjects] of Her Majesty in free

burgage (c); and I assign the writs, and have delivered the same according to inventory; and I assign the rents; and I bind myself to free and relieve the said dispoinee and his foresaids of all ground-annual, cess, annuity, and other public burdens (d); and I grant warrandice; and I consent to the registration hereof for preservation [or for preservation and execution]. In witness whereof [*insert a testing clause in the usual form*]. (e)

NOTE.—The clauses are assumed here as occurring in a disposition, but they may be used in other deeds and conveyances; and in the event of it being necessary to omit, vary, or qualify any one or more of them, this may be done, and the other clauses may be retained.

(a) Here hold as inserted the word “formerly.” See note (b) *supra*, p. 28.

(b) Or by the tenure of booking. See note (c) *supra*, p. 28.

(c) Under the option given by section 26 of the Conveyancing Act, this clause may either be inserted or omitted. See also note (e) *supra*, p. 28.

(d) This clause differs from the corresponding clause in an ordinary disposition in this—that the words “ground-annual, cess, annuity,” are substituted for “feu-duties, casualties.”

(e) Except in the two instances above mentioned, these clauses are identical with the corresponding clauses in an ordinary disposition. See Schedule (B.) No. 1, and notes thereon, *ante*, p. 23.

8. Import of Clauses in Schedule (B.) Nos. 1. and 2. (a)—The clause for resigning the lands in form No. 1. of Schedule (B.) hereto annexed shall be held and taken to be equivalent to a procuratory of resignation *in favorem* only in the terms in use prior to the 30th day of September 1847 (b), unless specially expressed to be a resignation *ad remanentiam*, in which case it shall be equivalent to a procuratory of resignation *ad remanentiam* according to the form in use prior to the said date (c); and the clause of assignation of writs and evidents in forms Nos. 1. and 2. of Schedule (B.) hereto

annexed (*d*), shall, unless specially qualified, be held to import an absolute and unconditional assignation to such writs and evidents, and to all open procuratories (*e*), clauses, and precepts, if any, and as the case may be, therein contained, and to all unrecorded conveyances to which the disponent has right (*e*); and the clause of assignation of rents in these forms shall, unless specially qualified, be held to import an assignation to the rents to become due for the possession following the term of entry, according to the legal and not the conventional terms (*f*), unless in the case of forehand rents, in which case it shall be held to import an assignation to the rents payable at the conventional terms subsequent to the date of entry (*g*); and the clause of warrandice in these forms shall, unless specially qualified, be held to imply absolute warrandice as regards the lands and writs and evidents (*h*), and warrandice from fact and deed as regards the rents; and the clause of obligation to free and relieve from feu duties, casualties, and public burdens, in form No. 1. of Schedule (B.) hereto annexed, shall, unless specially qualified, be held to import an obligation to relieve of all feu-duties or other duties or services or casualties (*i*) payable or prestable to the superior, and of all public, parochial, and local burdens (*k*) due from or on account of the lands conveyed prior to the date of entry (*l*); and the clause of obligation to free and relieve from ground annuals, cess, annuity, and other public burdens, in form No. 2. of Schedule (B.) hereto annexed, shall, unless specially qualified, be held to import an obligation to relieve of all ground annuals, cess, annuity, and other public, parochial, and local burdens, due from or on account of the lands conveyed prior to the date of entry; and the clause of consent to registration in these two forms shall, unless specially qualified, have the meaning and import and effect assigned to them in the 138th section of this Act (*m*).

(*a*) This section merely re-enacts, with slight verbal alterations, provisions of 10 and 11 Vict. c. 48, sec. 3, with reference to lands

not held burgage, and 10 and 11 Vict. c. 49, sec. 2, with reference to lands held burgage (both of which took effect from and after 30th September 1847), the import of the clause of resignation being more fully explained by 21 and 22 Vict. c. 76, sec. 5 (as regards lands not held burgage), which took effect from and after 1st October 1860.

The words here used to express the import of the short statutory clauses are substantially the words of the fuller clauses that were in general use before the passing of these statutes. See Juridical Styles, 3d ed., vol. i., p. 100.

(b) That is to say, the date from and after which the two statutes introducing the short form of the clause (10 and 11 Vict. c. 48 and c. 49) took effect.

(c) Section 4 of the Conveyancing Act, by abolishing charters and writs by progress, renders entry by resignation incompetent; and a procuratory or clause of resignation *in favorem* is consequently useless in a conveyance. As regards resignation *ad remanentiam*, section 6 of the Conveyancing Act provides a simple mode by which the object of such resignation—consolidation—may be effected.

(d) *Ante*, pp. 23 and 28.

(e) The short statutory clause is intended to put the disponee in exactly the same position as the disponent previously held, and is therefore appropriate only to the conveyance of the whole of an existing estate the titles of which are to be transferred absolutely and delivered to the disponee. It accordingly requires to be modified when inserted in an ordinary feu-charter or feu-disposition, or in a disposition of a part merely of the disponent's lands contained in the same titles. Again, if the titles contain any obligations in favour of the disponent beyond what is appropriate to them as feudal titles, such obligations should be specially assigned. See section 50 of the Conveyancing Act, which provides a short form of assignation.

Section 29 of the Conveyancing Act renders it no longer necessary that a general disposition should contain a clause of assignation of writs.

(f) That is to say, the purchaser has right to the rents legally due for the possession subsequent to the term of his entry. Thus, if the purchaser's term of entry be Whitsunday, and the rent for the possession during the half-year following Whitsunday be payable conventionally at Candlemas thereafter, instead of at the legal term of Martinmas, the rent payable at Candlemas is the first to which the purchaser has right. As to the Apportionment Act, see note (g) *infra*.

(g) That is to say, the purchaser is entitled to whatever is payable conventionally after the term of his entry. Thus, if the pur-

chaser's term of entry be Whitsunday, and the rent for the possession during the half-year between Whitsunday and Martinmas be conventionally payable at that Whitsunday, the purchaser is not entitled to the rent for that half-year.

The Apportionment Act of 1870 (33 and 34 Vict. c. 35, section 2) provides that "From and after the passing of this Act all rents, annuities, dividends, and other periodical payments in the nature of income (whether reserved or made payable under an instrument in writing or otherwise) shall, like interest on money lent, be considered as accruing from day to day, and shall be apportionable in respect of time accordingly."

This enactment appears sufficiently wide to include the case of a sale of lands as at a given date, so as to make the rents, whenever payable, apportionable between vendor and purchaser as at such date. (See the case of *Maxwell's Trustees v. Scott*, cited *infra*.) But section 7 declares that the provisions of the Act shall not extend to any case in which it is expressly stipulated that no apportionment shall take place. Where, therefore, the date of entry is between terms, and it is not desired that the rents of the current half-year should be apportioned between vendor and purchaser, the conveyance ought to contain an express declaration that apportionment is not to take place, and to state clearly how the rents are to be dealt with. The difficulties likely to arise from an ambiguous clause are illustrated by the case of *Maxwell's Trustees v. Scott*, 5th November 1873, 1 Rettie 122, the circumstances of which were as follows:—The disposition assigned the rents "from the date of delivery hereof, being the 14th day of October 1871, and without regard to the legal question of crops." The lands conveyed were arable farms let to tenants, whose entries were to houses and grass at Whitsunday, and to arable lands at the separation of the crops from the ground, the first term's payment of rent being payable at the first term of Martinmas after entry. The purchaser having collected the rents payable at Martinmas 1871, the vendors raised this action against him for payment of the proportion of the rents effleiring to the period between Whitsunday and 14th October 1871. The Lord Ordinary (Gifford) decided in favour of the pursuers, holding that the Apportionment Act applied, and that the apportionment must be of the rents current between Whitsunday and Martinmas. But this decision was reversed by a majority of the Second Division, on the ground that the rents being forehand rents, the purchaser was entitled to the whole rents payable at Martinmas, and that the only apportionment that could have taken place applied to the rents payable at the preceding Whitsunday. Lord Benholme, however, dissented on the ground that the parties by excluding the consideration of crops intended the rents payable at Martinmas to be regarded as for the possession during the previous half-year, and to be apportioned accordingly.

See also the case of *Latta v. Edinburgh Ecclesiastical Commissioners*, 30th November 1877, 5 Rettie 266, where it was held that the Apportionment Act did not apply to payments of stipend and ann under the Act 1672, c. 13.

(h) Even in a gratuitous conveyance. If there are any feu rights or current leases, they ought to be excepted from the warrandice. The most recent cases as to the effect of absolute warrandice are *Cairns v. Howden*, 15th December 1870, 9 Macph. 284; *Leith Heritages Co. v. Edinburgh and Leith Gas Co.*, 7th June 1876, 3 Rettie 789; and *Brownlie v. Miller*, 16th July 1878, 15 Scot. Law Rep. 718.

(i) The obligation to relieve of casualties is applicable only to casualties which may have been actually exigible prior to the term of entry. See note (d) to sub-section 4 of section 4 of the Conveyancing Act, *post*.

(k) A precentor's salary payable by long usage of the vendor and his ancestors is not a public or parochial burden for which a singular successor becomes liable after the date of his entry. *Traill v. Dangerfield*, 21st February 1870, 8 Macph. 579.

(l) Burdens not payable as at the date of the purchaser's entry are apportionable according as the rents for the corresponding period are divisible between the vendor and the purchaser. When the purchaser's date of entry is between terms, the disposition ought to state clearly how the rents and corresponding burdens are to be apportioned.

(m) That is to say, they "shall unless specially qualified import a consent to registration and a procuratory of registration in the Books of Council and Session, or other judges' books competent, therein to remain for preservation; and also, if for execution, that letters of horning, and all necessary execution, shall pass thereon, upon six days' charge, on a decree to be interponed thereto in common form."

9. Conditions of Entail may, in Conveyances of Entailed Lands, be inserted by reference merely (a).—It shall not be necessary, in any conveyance or deed (b) of or relating to lands held under a deed of entail, or of or relating to lands obtained by excambion in exchange for lands held under any deed of entail, or of or relating to lands purchased or acquired for the purpose of being added to any estate held under any deed of entail, or entailed on the heirs and under the conditions specified in any deed of entail (c), to insert the destination of heirs, or the conditions, provisions, and prohibitory, irritant, and resolute clauses, or clause authorising registration in the register of tailzies (d), contained in any such deed of entail; provided the same shall in such conveyance or deed

be specially referred to, as set forth at full length in such deed of entail recorded in the register of tailzies, if the same shall have been so recorded, or (e) as set forth at full length in any conveyance or deed recorded in the appropriate register of sasines, and forming part of the progress of title deeds of the said lands held under such deed of entail, such reference being made, as nearly as may be, in the terms set forth in Schedule (C.) hereto annexed; and the reference to such destination, or to such conditions, provisions, and prohibitory, irritant, and resolute clauses, or clause authorising registration in the register of tailzies, if so made in any such conveyance or deed, whether dated prior or subsequent to the commencement of this Act (f), shall be equivalent to the full insertion thereof, and shall to all intents and in all questions whatever, whether *inter hæredes* or with third parties, have the same legal effect as if the same had been inserted exactly as they are expressed in the recorded deed of entail, conveyance, or deed referred to, notwithstanding any law or practice to the contrary, or any injunction to the contrary contained in such deed of entail, or any enactments or provisions to the contrary contained in an Act of the Parliament of *Scotland* made in the year 1685, intituled "*An Act concerning Tailzies*" (g), or in any other Act or Acts of the Parliament of *Scotland*, or of *Great Britain*, or of the United Kingdom of *Great Britain and Ireland*, now in force.

(a) This section re-enacts, with slight alterations, the provisions of the following statutes, a great condensation being effected by the extensive signification given by the interpretation clause (sec. 3, paragraph 7, *ante*, p. 6) to the words "deed" and "conveyance,"—viz., 10 and 11 Vict. cap. 47, sec. 5, taking effect from and after 15th November 1847; 10 and 11 Vict. cap. 48, sec. 4; 10 and 11 Vict. c. 49, sec. 3,—both taking effect from and after 30th September 1847,—and all three dispensing with the full insertion of conditions of entail, the *first* in services and instruments following thereon, the *second* in deeds or instruments used to transmit, renew, or complete a title to lands not held burgage, and the *third* in such deeds or instruments when applicable to lands held burgage; 10 and 11 Vict. cap. 51, sec. 26, which took effect from and after 1st

October 1847, dispensing with the full insertion of conditions of entail in Crown charters and sasines following thereon; 21 and 22 Vict. c. 76, sec. 17, which took effect from and after 1st October 1858, dispensing with the full insertion of the destination of heirs in deeds or instruments used to transmit, renew, or complete a title to lands not held burgage; 23 and 24 Vict. c. 143, sec. 11, which took effect from and after 1st October 1860, extending the last-mentioned provision to lands held burgage; and 23 and 24 Vict. c. 143, sec. 27, which took effect from and after 1st October 1860, dispensing with the full insertion of the destination of heirs, conditions of entail, &c., in excambions of entailed lands, whether held burgage or not.

The object of the section is merely to abbreviate the forms of deeds and instruments relating to entailed estates, and so to lessen the risk of blunders.

(b) As to the various writings comprised under the words "conveyance or deed," see section 3, paragraph 7, *ante*, p. 6.

(c) By this clause of the section the reference is for the first time made competent in the case of conveyances of lands purchased or acquired for the purpose of being added to an estate already entailed, or of being entailed on the heirs and under the conditions specified in a deed of entail already existing.

(d) An express clause authorising registration in the register of tailzies has the same effect as prohibitory irritant and resolute clauses. See section 14 of the Consolidation Act, *post*.

(e) An option is thus allowed in all cases. The reference may be either to the deed of entail as recorded in the register of tailzies, or to a conveyance or deed of the character here specified as recorded in the register of sasines.

(f) This clause gives retrospective effect to the section.

(g) The Act 1685, c. 22, which was passed for the purpose of placing beyond doubt the right of proprietors to entail their lands, declared, *inter alia*, that the provisions and irritant clauses of a deed of entail should be repeated in all subsequent conveyances of the entailed estate to any of the heirs of entail, and that "if the said provisions and irritant clauses shall not be repeated in the rights and conveyances, whereby any of the heirs of tailzie shall brook or enjoy the tailzied estate, the said omission shall import a contravention of the irritant and resolute clauses against the person and his heirs who shall omit to insert the same, whereby the said estate shall *ipso facto* fall, accresce, and be devolved to the next heir of tailzie, but shall not militate against creditors, and other singular successors, who shall happen to have contracted *bona fide* with the person who stood infeft in the said estate, without the said irritant and resolute clauses in the body of his right."

SCHEDULE (C.)

Clause of Reference to Destinations and Conditions of Entail, &c.

[*After inserting such part of the destination as may be thought necessary, add,*] and to the other heirs specified in a disposition and deed of entail [*or as the case may be*] of the said lands executed by the deceased *E.F.*, dated the day of in the year , and recorded in the register of tailzies on the day of in the year , [*or in the said disposition and deed of entail dated and recorded as aforesaid, or in a deed or instrument (specify the deed or conveyance) recorded (specify register of sasines) upon the day of in the year*].

[*And after the description of the lands insert,*] but always with and under the conditions, provisions, and prohibitory irritant and resolute clauses [*or clause authorising registration in the register of tailzies (a), as the case may be*], contained in the said disposition and deed of entail, dated and recorded as aforesaid [*or in (specify deed or conveyance) recorded in (specify register of sasines) upon the day of in the year*].

[*And in subsequent clauses in which it is usual or requisite to refer again to the conditions of the entail, &c., the reference may be made thus :*] but always with and under the conditions, provisions, and prohibitory irritant and resolute clauses [*or clause authorising, registration in the register of tailzies, as the case may be,*] before referred to.

(a) See note (d) *ante*, p. 35.

10. *Real burdens may be referred to as already in the Register of Sasines (a).*—Where lands are or shall hereafter be held under any real burdens or conditions or provisions or limitations whatsoever appointed to be fully inserted in the investitures of such lands, it

shall, notwithstanding such appointment, and notwithstanding any law or practice to the contrary, not be necessary in any conveyance or deed (*b*) of or relating to such lands to insert such real burdens or conditions or provisions or limitations, provided the same shall, in such conveyance or deed, be specially referred to as set forth at full length in the conveyance or deed of or relating to such lands recorded in the appropriate register of sasines, wherein the same were first inserted, or in any such conveyance or deed of subsequent date recorded as aforesaid, and forming part of the progress of titles of the said lands (*c*), such reference being made in the terms or as nearly as may be in the terms set forth in Schedule (D.) hereto annexed (*d*); and the reference to such real burdens or conditions or provisions or limitations if so made in any such conveyance or deed, whether dated prior or subsequent to the commencement of this Act, shall be held to be equivalent to the full insertion thereof, and shall to all intents and in all questions whatever, whether with the disponent or superior or third parties, have the same legal effect as if the same had been inserted exactly as they are expressed in the recorded conveyance or deed referred to, notwithstanding any law or practice or Act or Acts of Parliament to the contrary (*e*).

(*a*) This section re-enacts, with slight verbal alterations, the provisions of the following statutes, dispensing with the full insertion of real burdens, &c., viz.—10 and 11 Vict. c. 47, sec. 6, taking effect from and after 15th November 1847, as regards services; 10 and 11 Vict. c. 48, sec. 5, taking effect from and after 30th September 1847, as regards deeds and instruments employed to transmit land not held burgage; 10 and 11 Vict. c. 49, sec. 4, taking effect from and after 30th September 1847, as regards deeds and instruments used to transmit lands held burgage; 10 and 11 Vict. c. 50, sec. 4, taking effect from and after 30th September 1847, as regards bonds and dispositions in security; 10 and 11 Vict. c. 51, taking effect from and after 1st October 1847, as regards Crown charters. By all these statutes reference was required to be made to the real burdens as set forth at full length in a duly recorded instrument of sasine forming part of the progress of titles; but by 23 and 24 Vict. c. 143, sec. 31, taking effect from and after 1st October 1860, such reference was allowed to be made to any duly recorded conveyance or notarial instrument.

The object of this section is merely to abbreviate the forms of deeds and instruments used in conveying lands, &c.

Section 32 of the Conveyancing Act contains ampler provisions with regard to importing real burdens, conditions, &c., by reference; but there is nothing to prevent the use of the form of the clause of reference provided by the present section of the Consolidation Act.

(b) As to the various writings comprehended by the words "conveyance or deed," see section 3, paragraph 7, *ante*, p. 6.

(c) Under section 32 of the Conveyancing Act, real burdens, &c., may be imported by reference even into a feu charter or other original deed of conveyance, the proprietor executing and recording in the register of sasines a deed setting forth the conditions under which he is to feu or otherwise deal with the lands therein specified.

(d) Or in the terms set forth in Schedule (II.) of the Conveyancing Act.

(e) In the case of *Lauder v. Shiels*, 17th May 1873, 11 Macph. 605, the proprietor of an entailed estate who was authorised by a private Act of Parliament, passed in 1828, to feu the estate on condition that the charters and conveyances should contain certain clauses, was held entitled to insist that there should be inserted in a writ by progress, to be granted by him, a reference to the conditions specified and prescribed in the private Act, as well as in the original feu-contract.

SCHEDULE (D.)

Clause of Reference to Real Burdens, Conditions, &c., in Investiture (a).

[After the description of the lands, instead of inserting the burdens, &c. at length, these may be referred to as follows, viz. :] but always with and under the real burdens, conditions, provisions, and limitations [or such of these as may apply or have reference to the case] specified in a deed [or instrument, here specify a deed or conveyance in which the burdens, &c. were first inserted, or any subsequent deed or conveyance in which they are inserted (b), forming part of the progress of the titles to the lands] recorded [specify register of sasines, or if the deed or conveyance as recorded has been previously referred to (c), say in the said deed [or instrument] recorded as aforesaid] on the day of in the year .

[*And in subsequent clauses in which it is requisite or usual to refer again to the burdens, &c. the reference may be made thus:*] but always with and under the real burdens, conditions, provisions, and limitations [*or such of these as may apply or have reference to the case*] before referred to.

(a) See note (c) *ante*, p. 38.

(b) The reference must be to a deed or instrument in which the conditions, &c., are set forth at full length, and not to one in which they are merely referred to.

(c) Even where the deed has been previously mentioned, and the date of recording specified, it is expedient, if not actually essential, to repeat the date of recording. //

11. *Description of Lands contained in recorded Deeds may be inserted in subsequent Writs by reference merely.*—In all cases where any lands have been particularly described in any prior conveyance or deed of or relating thereto recorded in the appropriate register of sasines, it shall not be necessary in any subsequent conveyance or deed conveying or referring to the whole or any part of such lands to repeat the particular description of the lands at length, but it shall be sufficient to specify some leading name or names or some distinctive description of the lands, as contained in the titles thereto, and to specify the name of the county, and, where the lands are held by burgage tenure, or by any similar tenure, the name of the burgh and county in which they are situated, and to refer to the particular description of such lands as contained in such prior conveyance or deed so recorded in or as nearly as may be in the form set forth in Schedule (E.) hereto annexed; and the specification and reference so made in any such subsequent conveyance or deed, whether dated prior or subsequent to the commencement of this Act, shall be held to be equivalent to the full insertion of the particular description contained in such prior conveyance or deed, and shall have the same effect as if the particular description had been inserted in such subsequent conveyance or deed exactly as it is set forth in such prior conveyance or deed (a).

(a) This section, amending the provisions of 21 and 22 Vict. c. 76, sec. 15, and 23 and 24 Vict. c. 143, sec. 34, has been repealed by section 61 of the Conveyancing Act, which substitutes provisions with a retrospective effect.

SCHEDULE (E.)

Clause of Reference to particular Description contained in a prior Deed (a.)

[*After giving some leading name or names or some other distinctive description of the lands as contained in the titles thereof and the name of the county,*

and in the case of lands held by burgage tenure, the name of the burgh and county in which the lands lie, add] being the lands [or subjects] particularly described in the [here specify a prior deed or instrument containing the particular description of the lands or subjects] recorded [specify register of sasines, or if the deed or instrument as recorded has been previously referred to, say, in the said deed [or instrument] recorded as aforesaid] on the _____ day of _____ in the year _____.

[If part only of lands is conveyed, describe such part, and add, being part of the lands particularly described, &c. ; or thus, being the lands [or subjects] as particularly described, &c., with the exception of, and describe the part excepted].

(a) The section authorising the use of this schedule having been repealed, the schedule cannot now be used. Recourse must be had to Schedule O. of the Conveyancing Act.

12. Clause directing part of Conveyance to be recorded (a).—Immediately before the testing clause of any conveyance of lands, it shall be competent to insert a clause of direction, in or as nearly as may be in the form No. 1. of Schedule (F.) hereto annexed, specifying the part or parts of the conveyance which the grantor thereof desires to be recorded in the register of sasines (b) ; and when such clause is so inserted in any conveyance, whether dated before or after the commencement of this Act, and with a warrant of registration thereon, in which express reference is made to such clause of direction (such warrant being in the form as nearly as may be of No. 2. of Schedule (F.) hereto annexed), is presented to the keeper of the appropriate register of sasines for registration, such keeper shall record such part or parts only, together with the clause of direction and the testing clause and warrant of registration ; and in the absence of such express reference in the warrant of registration as aforesaid, such conveyance shall be engrossed in the register as if it had contained no clause of direction ; and the recording of such part or parts of the conveyance, together with the clause of direction and the testing clause, and the warrant of registration, as before provided, shall have the same legal effect as if, at the date of such recording, a notarial instrument containing

such part or parts of the conveyance had been duly expedite and recorded in the appropriate register of sasines in favour of the person on whose behalf the conveyance is presented (c): Provided that, notwithstanding such clause of direction, it shall be competent for the person entitled to present the conveyance for registration to record the whole conveyance, or to expedite and record a notarial instrument thereon, as after provided (d), in the same manner as if the conveyance had contained no such clause of direction; and where such notarial instrument shall be expedite no part or parts of the conveyance directed to be recorded shall be omitted from such instrument (e).

(a) This section re-enacts, with slight alterations, the provisions of 21 and 22 Vict. c. 76, sec. 3, taking effect from and after 1st October 1858, as regards conveyances of land not held burgage, and 23 and 24 Vict. c. 143, secs. 5 and 25, taking effect from and after 1st October 1860, the former section extending the provision to conveyances of land held burgage, and the latter providing that when a deed contains a clause of direction which is to be acted on, such clause shall be referred to in the warrant of registration.

The object of the section is to enable infestment to be obtained without the necessity of either expediting a notarial instrument or recording the whole of a deed (such as a marriage contract) containing, *inter alia*, a conveyance of lands. Recourse may be had to the mode here authorised either to obviate the publication in the register of sasines of clauses that have no bearing on the conveyance, or to prevent any conditions of the grant being omitted from the disponee's infestment.

(b) Whatever parts of the deed may be omitted, the clause of direction must, of course, include the actual conveyance of the lands, and every part required to make the partial registration intelligible and sufficient. The schedule contemplates the registration beginning with the commencement of the deed, thus giving at once the name and designation of the granter, to be followed by the words of conveyance, the name and designation of the grantee, the description of the lands conveyed, and any reservations, real burdens, or conditions.

The words of this section refer directly only to the case of the granter desiring *a part or parts* of the conveyance to be recorded; and there is room for doubt as to the competency of directing the *whole* deed (without the exception of any part) to be recorded. Where a clause has been inserted directing the whole deed to be recorded, probably the best course for the grantee to adopt is to record the whole deed with an ordinary warrant of registration, as may be competently done under the proviso at the end of the present section. But it may be

doubted whether the grantee would not be able to secure the omission of any portion that he desired by expediting and recording a notarial instrument omitting such portion, on the ground that there was no valid clause of direction.

(c) The legal effect of recording such a notarial instrument is that the disponent becomes infest in the lands conveyed to him. See sections 15 and 17 of the Act.

(d) Viz., by section 15 in the case of recording the conveyance, and by section 17 in the case of expediting and recording a notarial instrument.

(e) The notarial instrument will be in the form of Schedule (J.); but it should contain, though not necessarily in the form of quotation, the whole part or parts directed to be recorded. The clause of direction and the testing-clause of the deed are sometimes inserted in the instrument, but their insertion seems unnecessary.

SCHEDULE (F.)

No. 1.

*Clause of Direction specifying part of Deed which
Grantor desires to be recorded.*

And I direct to be recorded in the register of sasines the part of this deed from its commencement to the words [*insert words*] on the line of the page [and also the part from the words [*insert words*] on the line of the page to the words [*insert words*] on the line of the page]. [Or, I direct the whole of this deed to be recorded in the register of sasines, with the exception of the part [or parts, as the case may be, specifying the part or parts excepted, as above].

No. 2.

*Warrant of Registration to be written on Deed where it
is intended to record it in terms of a Clause of
Direction (a).*

Register the above deed in terms of the clause of direction therein contained on behalf of A.B. [*insert*

designation] in the register of the county of *C.* [*or if the writ contains land in more than one county, in the registers of the counties of C., D., E., and F., or, if the lands be held burgage* (b) in the register or registers of the burgh of *M.*, or burghs of *M., N., O., and P.*]

(Signed) *A.B.*,

[*or*] *G.H.*,

W.S., Edinburgh, agent.

[*or*] *J.K. & L.*,

W.S., Edinburgh, agents.

[*or as the case may be*].

(a) As to the requisites of warrants of registration, see sections 15, 141, and 145 of the Act.

(b) Although section 25 of the Conveyancing Act abolishes the distinction between burgage and feu, writs affecting land formerly held burgage still require to be recorded in the burgh register of sasines.

13. *Several Lands conveyed by the same Deed may be comprehended under one general name* (a).—Where several lands (b) are comprehended in one conveyance in favour of the same person or persons, it shall be competent to insert a clause in the conveyance, declaring that the whole lands conveyed and therein particularly described shall be designed and known in future by one general name to be therein specified; and on the conveyance containing such clause, whether dated before or after the commencement of this Act, or on an instrument following thereon, whether dated before or after the commencement of this Act, and containing such particular description and clause, being duly recorded in the appropriate register of sasines, it shall be competent in all subsequent conveyances and deeds and discharges, of or relating to such several lands, to use the general name specified in such clause as the name of the several lands declared by such clause to be comprehended under it; and such subsequent conveyances and deeds and discharges of

or relating to such several lands under the general name so specified shall be as effectual in all respects as if the same contained a particular description of each of such several lands, exactly as the same is set forth in such recorded conveyance or instrument (c) : Provided always, that reference be made in such subsequent conveyances and deeds and discharges to a prior conveyance or instrument recorded as aforesaid, in which such particular description and clause are contained : Provided also, that it shall not be necessary in such clause to comprehend under one general name the whole lands contained in the conveyance in which such clause is inserted, but that it shall be competent to comprehend certain lands under one general name and certain other lands under another general name, it being clearly specified what lands are comprehended under each general name ; and such reference shall be in or as nearly as may be in the terms set forth in Schedule (G.) hereunto annexed.

(a) This section merely re-enacts, with verbal alterations, section 16 of 21 and 22 Viet. c. 76 (which took effect from and after 1st October 1858), with the effect of extending its provisions to burgage subjects. The schedule is, however, amended by the substitution of the words "general name or names" for the words "leading name or names," thus removing doubts which had rendered the prior enactment inoperative as to what could be considered as a leading name or names. See Bell's Lectures, 1st ed., pp. 556-7 ; 2d ed., p. 586.

The object of the section is merely to abbreviate descriptions of lands classed together.

(b) This section is applicable only to the case of *several* lands with separate descriptions. Where it is desired to abbreviate the description of a single subject, recourse must be had to the provisions of section 61 of the Conveyancing Act.

(c) Where other lands are acquired subsequently to the giving of the general name, such lands, however insignificant, must be separately described.

SCHEDULE (G.)

*Clause of Reference to Conveyance, containing
general Designation of Lands.*

[After giving the general name or names of the lands and the name of the county, or burgh and county, as the case may be, add], as particularly described in the disposition [or other deed, as the case may be] granted by C.D., and bearing date [here insert date], and recorded in the [specify the register of sasines] on the day of in the year , and in which the lands hereby conveyed are declared to be designed and known by the said name of " [here insert name], or "as particularly described in the instrument [specify instrument] recorded, &c., and in which the lands hereby conveyed are declared," &c. [If part only of lands is conveyed, then follow form for similar case given in Schedule (E.) (a).]

(a) For Schedule (E.) of this Act is now substituted Schedule O. of the Conveyancing Act; but in this part the two schedules are identical.

14. Certain Clauses in Entails no longer necessary (a).—Where a deed of entail contains an express clause authorising registration of the deed in the register of tailzies, it shall not be necessary to insert clauses of prohibition against alienation, contracting debt, and altering the order of succession, and irritant and resolute clauses, or any of them; and such clause of registration contained in any deed of entail of lands not held by burgage tenure dated on or after the 1st day of October 1858 (b), or of lands held (c) by burgage tenure dated on or after the 10th day of October 1860 (d), shall have in every respect the same operation and effect as if such clauses of prohibition, and such irritant and resolute clauses, had been inserted in such deed of entail, any law or practice to the contrary notwithstanding.

(a) This section merely consolidates the provisions of 11 and 12 Vict. c. 36, sec. 39, taking effect from and after 1st August 1848, dispensing with irritant and resolute clauses; 21 and 22 Vict. c. 76, sec. 18, taking effect from and after 1st October 1858, dispensing with prohibitory clauses in entails of land not held burgage; and 23 and 24 Vict. c. 143, sec. 12, taking effect from and after 1st October 1860, dispensing with prohibitory clauses in entails of land held burgage.

The object of the section is to abbreviate deeds of entail, and to obviate the risk of error in framing and inserting the clauses required by the Act 1685, c. 22 to render an entail valid and effectual.

(b) That is to say, the date from and after which the Titles to Land Act of 1858 (21 and 22 Vict. c. 76) came into operation.

(c) Here read as inserted "prior to 1st October 1874," the distinction between burgage and feu having been abolished from and after that date by section 25 of the Conveyancing Act.

(d) This seems to be a mistake for 1st October 1860, the date from and after which the Titles to Land Act of 1860 (23 and 24 Vict. c. 143) came into operation.

15. *Instrument of Sasine no longer necessary, but Conveyance may be recorded instead* (a).—It shall not be necessary towards obtaining infeftment in land (b) to expedite and record in the case of lands not held by burgage tenure an instrument of sasine (c), or, in the case of lands (d) held by burgage tenure, an instrument of resignation and sasine, on any conveyance or deed (e) of or relating to such lands, but it shall be competent and sufficient for the person or persons in whose favour the conveyance or deed has been or shall be granted or conceived, instead of expediting and recording such instrument of sasine or of resignation and sasine, to record the conveyance or deed itself in the appropriate register of sasines; and the conveyance or deed being presented for registration in such register, with a warrant of registration thereon (f), in or as nearly as may be (g) in the form No. 1. of Schedule (H.) hereto annexed, and being so recorded along with such warrant, shall have the same legal force and effect in all respects as if the conveyance or deed so recorded had been followed by an instrument

of sasine in the case of lands not held by burgage tenure, or, in the case of lands (*d*) held by burgage tenure, by an instrument of resignation and sasine expedite in favour of the person on whose behalf the conveyance or deed is presented for registration, and recorded in the appropriate register of sasines, at the date of recording the said conveyance or deed (*h*); and where it is desired to give investiture *propriis manibus* (*i*), it shall be competent for the person in whose favour the conveyance or deed has been or shall be granted or conceived to record the conveyance or deed itself in the register of sasines applicable to the lands therein contained, with a warrant of registration thereon in or as nearly as may be (*g*) in the form of No. 3 of Schedule (H.) hereto annexed, signed by such person (*k*), and such conveyance or deed being so recorded along with such warrant, shall have the same legal force and effect in all respects as if the conveyance or deed so recorded had been followed by an instrument of sasine, or of resignation and sasine *propriis manibus* expedite in favour of the wife of such person and signed by such person, and recorded at the date of recording the said conveyance or deed, according to the law and practice heretofore in force (*h*).

(*a*) This section consolidates the provisions of the following statutes:—8 and 9 Vict. c. 31, secs. 1 and 6, which took effect from and after 1st October 1845, as regards assignations or conveyances of heritable securities; 10 and 11 Vict. c. 50, secs. 1 and 6, which took effect from and after 30th September 1847, as regards bonds and dispositions in security; 21 and 22 Vict. c. 76, sec. 1, which took effect from and after 1st October 1858, as regards conveyances of lands not held burgage; and 23 and 24 Vict. c. 143, sec. 3, which took effect from and after 1st October 1860, as regards conveyances of land held burgage. The forms of warrants given in the schedule now, however, specify the county or counties, or burgh or burghs, in whose books registration is to take place. See section 141.

The object of the section is to render the registration of a conveyance or other deed equivalent to the old mode of infeftment by recorded instrument of sasine.

As to registration in the register of sasines for preservation, or for preservation and execution, as well as for publication, see section 12 of the Land Registers Act of 1868, printed *post*.

(b) Including by the interpretation clause (section 3, paragraph 13) *ante*, p. 8, "all heritable subjects, securities, and rights."

(c) Instruments of sasine are still competent on a conveyance containing a precept of sasine; but they cannot now be recorded without a warrant of registration. See notes (t) and (u), *ante*, p. 21.

(d) Here read as inserted "formerly," the distinction between burghage and feu having been abolished by section 25 of the Conveyancing Act.

(e) Including, by the interpretation clause (section 3, paragraph 7) *ante*, p. 6, almost every conceivable writ relating to lands.

(f) The objects for which the warrant of registration has been introduced are, in the first place, to ensure that the registration is the act of the person who is thus infeft, or of his responsible agent, seeing that infeftment has important legal consequences; and in the second place, in the event of there being two or more persons with joint interests, such as liferent and fee, to enable one of them to obtain infeftment without at the same time infefting the others. In the case of a destination to a person named in liferent, and to other persons unnamed, such as children born or to be born, the warrant of registration may be on behalf of such person and persons, in terms of the destination. See also note (b), *post*, p. 50.

(g) There must be no deviation from the form given in the schedule. Where a statute allows a new mode of procedure to be adopted instead of a previously imperative and still competent mode, a person desiring to take advantage of the statute must do exactly in the manner prescribed. Thus in the case of *Johnston v. Pettigrew*, 16th June 1865, 3 Macph. 954, a warrant of registration was held inept on two separate grounds—first, that it did not state the designation of the person on whose behalf the deed was registered; and second, that the agent signing it did not add to his signature his professional designation, and (as was then requisite) the name of his client. Section 145 of the Consolidation Act exempts from challenge on certain grounds, including the latter of the above two grounds, warrants recorded before the commencement of the Act; and section 141 permits an agent to subscribe a warrant either as an individual or by the social name of his firm.

(h) That is to say, the date of recording the conveyance is the date of the infeftment.

Under section 4 of the Conveyancing Act the recording has the further effect of feudally completing the title of the person on whose behalf the recording has taken place.

(i) In modern practice investitures *propriis manibus* are used only by husbands to give liferent rights to their wives, the husband's signature to the sasine or warrant of registration being

regarded as equivalent to a conveyance. Sasine in the old form was the only competent mode of giving infestment *proprieis manibus*, till the Consolidated Act introduced the form of warrant of registration here given.

(k) The person himself, and not his agent, must sign the warrant. The signature operates as a conveyance, but does not require to be attested.

SCHEDULE (H.)

No. 1.

Warrant of Registration to be written on a Conveyance, &c., when presented without Assignment apart, or with Writ of Resignation or other similar Writ thereon (a).

Register on behalf of *A.B.*, [*insert designation*] (b) in the register of the county of *C.* [*or if the conveyance, &c. or writ contains lands in more than one county, in the registers of the counties of C., D., E., and F., or, if the lands be (c) held burgage, in the register of the burgh of M., or in the registers of the burghs of M., N., O., and P.*] [*or (d) register, &c., along with assignment (or assignments) (or writ of resignation) (a) hereon, in the register of the county of C., &c., or in the register of the burgh of M., &c., or otherwise as the case may be*].

(Signed) *A.B.* (e),
 [or] *G.H.* (f),
 W.S., Edinburgh (g), agent (h).
 [or] *J.K. & L.* (i),
 W.S., Edinburgh, agents,
 [*or as the case may be*] (k).

No. 2.

Warrant of Registration to be written on a Conveyance, &c., when presented with Assignment apart, or Notarial Instrument (l).

Register on behalf of *A.B.* [*insert designation*] (b) in the register of the county of *C.* [*or if the conveyance, &c. or writ contains lands in more than one county, in*

the registers of the counties of *C.*, *D.*, *E.*, and *F.*, or if the lands be (c) held burgage, in the register of the burgh of *M.*, or in the registers of the burghs of *M.*, *N.*, *O.*, and *P.*] along with the assignation [or assignations, or notarial instrument] docquetted with reference hereto [or otherwise as the case may be].

(Signed) *A.B.* (e),

[or] *G.H.* (f),

W.S., Edinburgh (g), agent (h).

[or] *J.K. & L.* (i),

W.S., Edinburgh, agents,

[or as the case may be] (k).

No. 3.

Warrant of Registration to be written on a Conveyance presented for registration propriis manibus.

Register on behalf of *A.B.* [insert designation] (b) in the register of the county of *C.* [or if the conveyance, &c. or writ contains lands in more than one county, in the registers of the counties of *C.*, *D.*, *E.*, and *F.*, or if the lands be (c) held burgage in the register of the burgh of *M.*, or in the registers of the burghs of *M.*, *N.*, *O.*, and *P.*]: And also ex propriis manibus on behalf of *L.*, wife of the said *A.B.*, in liferent [or as the case may be].

(Signed) *A.B.* (m)

(a) Writs of resignation and other writs by progress are now rendered incompetent by section 4, sub-section 1, of the Conveyancing Act.

(b) The designation is essential;—*Johnston v. Pettigrew*, 16th June 1865, 3 Macph. 954. Where there are several parties with various interests, there should be added the words “for their respective rights and interests;” and when the parties are trustees, the words “as trustees within (or above) mentioned.” Any further information as to the character and extent of the rights of the parties should be left to be gathered from the deed itself.

(c) For “be” substitute “were;” the distinction between burgage and feu having been abolished by section 25 of the Conveyancing Act, which, however, directs that writs affecting land which immediately prior to the commencement of the Act was held burgage shall still be recorded in the burgh register of sasines.

(d) The alternative here following is applicable to the case of an unrecorded conveyance with an assignation or assignations thereof written thereon. See section 22 of the Act.

(e) That is to say, the usual signature of the party on whose behalf the registration is to take place. The party being already designed in the warrant, his designation does not require to be appended to his signature.

(f) That is to say, the usual signature of the agent of the party on whose behalf the registration is to take place.

(g) That is to say, the professional designation of the agent, such as, "advocate, Aberdeen," "solicitor, Banff," or "writer, Glasgow." This is essential to the validity of warrants recorded after 31st December 1868; see section 145 of the Act.

(h) The word "agent" is appended to signify that the professional man signing the warrant is the duly authorised agent of the party on whose behalf the registration is to take place. That party's name and designation being contained in the warrant itself, it is not requisite to append them to the agent's signature. Section 141 of the Act requires warrants to be signed either by the parties themselves or by their agents; but it does not seem necessary that such agents shall be admitted law-agents entitled to practice in courts of law. All that is required is that the person signing as agent should be truly the agent of the party in this matter—that is to say, duly authorised to act for the party in signing the warrant of registration.

(i) That is to say, the usual subscription of a firm, signed by an agent who is a partner of the company. This mode of subscribing is specially authorised by section 141 of the Act.

(k) See notes (g) and (h) *supra*.

(l) This form of warrant is applicable to the case of an unrecorded conveyance with an assignation or assignations thereof not written on the conveyance itself. See sections 22 and 23 of the Act.

(m) That is to say, the usual signature of the party himself, not that of his agent. See note (k), *ante*, p. 49.

16. *Mode of expeding Sasine in lands holden Burgage (a).*—It shall not be necessary towards obtaining infeftment in lands holden by burgage tenure upon any conveyance or deed of or relating to such lands that the person or a procurator for the person obtaining infeftment shall appear before the provost or some one of the bailies of the burgh in which such lands are situated, and resign the same into his hands as into the hands of Her Majesty, and for such provost or bailie to give sasine to such person or procurator, nor shall it be necessary to proceed to the

ground of the lands, or to the council chamber of the burgh, or to use any symbol of resignation or sasine; and notwithstanding the provisions of the immediately preceding section of this Act, it shall be lawful and competent to resign and obtain infeftment in such lands by presenting to any notary public such conveyance or deed and other necessary warrants, and by such notary public giving sasine therein by subscribing and recording an instrument in the form and manner hereinafter mentioned; and the instrument of sasine, or of resignation and sasine, following on such conveyance or deed, may be expressed in the form or as nearly as may be in the form of Schedule (I.) hereto annexed, and shall be authenticated in the manner shown in such schedule; and such sasine, or resignation and sasine, and such instrument following thereon, shall be as valid and effectual as if the same had been made and received and given and expressed in the mode and form in use prior to the 30th day of *September* 1847, and that notwithstanding of an Act of the *Scottish* Parliament passed in the year 1567, or any other Act of Parliament now in force to the contrary; and every such instrument of sasine, or of resignation and sasine, and every similar instrument of sasine, or of resignation and sasine expedite in virtue of the provisions of the Act 10th and 11th of the reign of Her present Majesty, chapter 49, shall be recorded in manner in use prior to the said 30th day of *September* 1847, with regard to instruments of resignation and sasine in burghage property, and the town clerks of cities and burghs are hereby required to register the same accordingly; and such instruments of sasine, or of resignation and sasine, being so recorded, shall in all respects have the same effect at the date of such recording as if resignation had been made and accepted, and sasine had been given, and an instrument of sasine, or of resignation and sasine, had been expedite in favour of the person so obtaining infeftment, and had been recorded in the appropriate register of sasines, according to the law and practice in use prior to the 30th day of *September* 1847.

(a) This section merely re-enacts, with slight verbal alterations, the provisions of 10 and 11 Vict. c. 49, secs. 5 and 6, which took effect from and after 30th September 1847.

The object of the section was to provide a simple mode of expediting sasine applicable to lands held by burghage tenure.

Section 25 of the Conveyancing Act, by abolishing the distinction between burghage and feu, *inter alia*, in so far as regards the completion of titles, has rendered the provisions of this section of the Consolidation Act quite useless and obsolete, even in the very rare case of sasine being preferred to its modern equivalent registration. And section 26 of the Conveyancing Act, by declaring that any procuratory or clause of resignation inserted in a conveyance of land formerly held burghage shall be held *pro non scripto*, appears to have rendered incompetent the instrument of sasine (more properly the instrument of resignation and sasine) which proceeded on the procuratory of resignation.

This section and relative schedule may therefore be regarded as virtually repealed; and if in any case sasine is preferred to registra-

tion, recourse should be had to the short form of the instrument of sasine which was formerly applicable only to lands held feu; see *ante*, p. 18.

SCHEDULE (I.)

Instrument of Sasine in Burgage Subjects (a).

At there was by [or on behalf of] A.B. [design the disponsee or other person to whom sasine is given] presented to me, notary public subscribing, a disposition [or other deed, or an extract of a deed, or any other warrant as the case may be], granted by C.D. [here design the grantor], and dated the day of [here describe shortly any connecting deed or extract thereof in virtue of which sasine is given,] by which disposition [or otherwise as the case may be] the said C.D. sold, alienated, and disposed to the said A.B. [or to E.F., as the case may be,] and his heirs and assignees whomsoever [here insert the destination, if any,] heritably and irredeemably, [or redeemably in liferent, or otherwise, as the case may be,] All and whole [here insert the description of the lands conveyed, and any real burdens, conditions, provisions, and limitations, or any reference to the same, all as in the disposition, and if the disposition by C.D. was not to A.B. himself, but has been acquired by him as assignee, heir, or adjudger, or otherwise in whole or in part, state shortly the successive transferences, and the way in which he has right thereto,] which disposition contains an obligation to infeft the said A.B. [or E.F., as the case may be,] to be holden of Her Majesty in free burgage, and also contains procuratory [or a clause] to make resignation of the said lands and others in favour of the said disponsee and his foresaids, for new infeftment [or for new liferent infeftment, or for new infeftment in liferent and fee respectively, or as the case may be]; in virtue of which procuratory the said lands and others were resigned; and in terms of the said disposition [or otherwise, as the case may be] I hereby give sasine to the said A.B. of the foresaid lands and others [if the deed contains any conditions, &c., or any reference to the same as aforesaid, then add, “but always under the conditions, &c. before specified,” or “referred to,” as the case may be.] In witness whereof these presents, written on this and the preceding pages by G.H., my clerk, are subscribed by me before these witnesses, the said G.H. and J.K., also my clerk.

(Signed) *L.M.*, Notary Public.

G.H., witness.

J.K., witness.

(a) Now apparently incompetent; see note (a) *ante*, p. 52.

17. *Not necessary to record the whole Conveyance or Discharge (a).*—Where it is not desired to record

in the register of sasines the whole of a conveyance or deed (*b*), or the whole of a discharge (*c*), of or relating to lands, it shall be competent and sufficient to expedite and record in the appropriate register of sasines a notarial instrument setting forth generally the nature of the conveyance or deed or discharge, and containing those portions of the same by which the lands are conveyed or discharged, and by which real burdens, conditions, provisions, or limitations are imposed or discharged (*d*); and where by any conveyance or deed or discharge separate lands or separate interests in the same lands are conveyed or discharged in favour of the same or different persons, it shall not be necessary to record the whole of such conveyance or deed or discharge, but it shall be competent and sufficient to expedite and record as aforesaid a notarial instrument, setting forth generally the nature of the conveyance or deed or discharge, and containing the part or parts of the conveyance or deed or discharge by which particular lands are conveyed or discharged in favour of the person or persons in whose favour the notarial instrument is expedite, and the part of the conveyance or deed or discharge which specifies the nature and extent of the right and interest of such person or persons, with the real burdens, conditions, provisions, and limitations, if any; and such notarial instrument, shall be in or as nearly as may be (*e*) in the form of Schedule (J.) hereto annexed; and upon such notarial instrument, or any similar notarial instrument expedite in virtue of any of the Acts of Parliament hereby repealed (*f*) being so recorded (*g*), the person or persons in whose favour the same has been or shall be expedite and so recorded shall be in the same position as if, at the date of such recording, the conveyance or deed or discharge on which it proceeds, along with a warrant of registration thereon, had been recorded in the appropriate register of sasines in favour of such person or persons (*h*).

(*a*) This section re-enacts, with some alterations and additions, the provisions of 8 and 9 Vict. c. 31, sec. 1, which took effect from

and after 1st October 1845, as regards assignments of heritable securities; 21 and 22 Vict. c. 76, sec. 2, which took effect from and after 1st October 1858, as regards conveyances of lands not held burgage; 23 and 24 Vict. c. 143, sec. 4, which took effect from and after 1st October 1860, as regards conveyances of land held burgage.

The object of the section is to provide a mode of obtaining infeftment without the necessity of recording the whole of a conveyance or discharge, a form of notarial instrument being introduced for that purpose.

(b) This section goes farther than the sections it consolidates, in making the use of a notarial instrument competent in every case where a party chooses to have recourse to it, and not merely in the case of a deed having been granted "for further purposes and objects," or conveying separate lands or separate interests in the same lands. But no agent should burden his client with the extra expense occasioned by the use of a notarial instrument, unless there is some sufficient reason for not recording the whole deed in the usual way.

As to the writs included under the words conveyance or deed, see the interpretation clause, section 3, paragraph 7, *ante* p. 6.

(c) Discharges are frequently contained in deeds relating to other matters; but till the commencement of the present Act there was no provision applicable to such a case.

(d) Where the deed contains a clause of direction, no part directed to be recorded can be omitted from the notarial instrument. See section 12, *ante*, p. 40.

Real burdens, conditions, provisions, or limitations appointed to be inserted or referred to in instruments of sasine, &c., must be inserted or referred to in any notarial instrument that may be expedite. See section 146 of the Act.

(e) There must be no real deviation from the form prescribed in the Schedule. See note (g) *ante*, p. 48.

(f) *Viz.*, by section 4.

(g) The instrument now requires to have a warrant of registration engrossed on it before being recorded. See section 141 of the present Act and section 33 of the Conveyancing Act.

(h) That is to say, such person or persons shall, in the case of the notarial instrument being expedite on a conveyance, be infeft as at the date of recording the notarial instrument; see section 15. In the case of the notarial instrument being expedite on a discharge, the recording of the instrument is equivalent to the recording of the discharge itself.

SCHEDULE (J.)

Notarial Instrument (a) in favour of Disponee or his Assignee, &c.

At there was by [or on behalf of] (b) A.B. of Z., presented to me, notary public subscribing, a disposition [or other deed, or an extract of a deed, as the case may be], granted by C.D. of Y., and dated [insert the date], by which disposition [or otherwise as the case may be], the said C.D. sold, alienated, and disposed to the said A.B. [or gave, granted, and disposed, or otherwise, as the case may be, to the said A.B.] [or to E.F.], and his heirs and assignees [insert the destination, if any, so far as may be necessary], heritably and irredeemably [or redeemably, or in liferent, or otherwise, as the case may be], all and whole [insert the description of the lands conveyed, and any real burdens, conditions, provisions, and limitations, or any reference to the same, all as in the disposition or the deed, &c.] [If the person expeding the instrument be other than the original disponee, add] As also there was presented to me [here specify the title or series of titles by which such person acquired right, and the nature of his right]. Whereupon this instrument is taken in the hands of L.M. [insert name and designation of notary public] in the terms of the "Titles to Land Consolidation (Scotland) Act, 1868." (c) In witness whereof [insert testing clause as in Schedule (I.)] (d)

(a) Under the Stamp Act of 1870 a stamp duty of 5s. is imposed on "any notarial instrument to be expedited and recorded in "any register of sasines."

(b) That is to say, the word "by" is to be used when the deed is presented to the notary by the party himself; and the words "on behalf of" are to be used when it is presented by his agent.

(c) When the instrument is expedited, not merely under the provisions of the present Act, but also in virtue of the Conveyancing Act, there should be here inserted the words—and "*The Conveyancing (Scotland) Act, 1874.*"

(d) That is to say—"In witness whereof these presents, written on "this and the preceding pages by G.H., my clerk, are subscribed "by me before these witnesses, the said G.H. and J.K., also my clerk.

"G.H., witness.

"J.K., witness."

"(Signed) L.M., Notary Public.

The peculiarity of this form of testing clause is that it does not mention the date of signature, that being immaterial, as the instrument takes effect only from the date of recording.

As this form of testing clause is provided by the schedule, it ought to be adhered to, although sections 38 and 39 of the Conveyancing Act, relaxing the formalities required for the authentication of deeds, are undoubtedly applicable to all the instruments authorised by the Consolidation Act.

The notary public subscribes every page, adding the words "notary public" to his subscription on the last page, and generally the letters "N. P." to his signatures on the prior pages. He sometimes puts his motto on the last page, above his signature; but this is unnecessary, as no mention of it is made in the statutory forms.

The witnesses sign on the last page only. They attest merely the notary's subscription.

Before recording the instrument, a warrant of registration must be engrossed thereon. See note (g) *ante*, p. 55.

18. *Instrument of Resignation ad remanentiam unnecessary, but in place thereof Conveyance in favour of Superior may be recorded (a).—It shall not be necessary to expedé and record an instrument of resignation ad remanentiam on any procuratory of resignation ad remanentiam, or on any conveyance containing an express clause of resignation ad remanentiam, but it shall be competent and sufficient for the superior in whose favour the resignation under such procuratory or conveyance is authorised to be made to record in the appropriate register of sasines such procuratory or conveyance, with a warrant of registration thereon in the form or as nearly as may be in the form No. 1 of Schedule (H.) hereto annexed, or to expedé and record a notarial instrument as nearly as may be in the form of Schedule (J.) hereto annexed; and such procuratory or conveyance and warrant, or such notarial instrument, being so recorded, shall have the same effect as if, at the date of such recording, an instrument of resignation ad remanentiam in favour of the party on whose behalf the same is so recorded had been expedé on such procuratory or conveyance, and had been recorded in the appropriate register of sasines: Provided always, that nothing herein contained shall prevent an instrument of resignation ad remanentiam being expedé and recorded on a conveyance granted prior to the 1st day of October 1858, and containing a clause of resignation in the form authorised by the Act of the 10th and 11th Victoria, chapter 48; and that all instruments of resignation ad remanentiam may be in or as nearly as may be in the form of Schedule (K.) hereto annexed; and when in such form, whether expedé before or after the commencement of this Act, the same may, with warrant of registration thereon, be recorded in the appropriate register of sasines at any time during the life of the party in whose favour the resignation is made, and the date of presentment and entry set forth on any instrument of resignation in such form by the keeper of the register shall be the date of the resignation and of the instrument.*

(a) This section merely re-enacts, with a slight addition, 21 and 22 Vict. 76, sec. 4, which took effect from and after 1st October 1858, and the object of which was to provide shorter and simpler forms than those previously in use for the purpose of consolidating or formally re-uniting an estate of property with the estate of superiority in the same lands. See Bell's Lectures on Conveyancing, first edition, p. 718.

Page 58, line 16.

For "qua superior in favour of himself qua vassal," read "qua vassal in favour of himself qua superior."

On full consideration, the author is of opinion that neither a conveyance containing a clause of resignation *ad remanentiam*, nor even an instrument of resignation, is to be regarded as a writ by progress, in the sense of section 4 of the Conveyancing Act.

It seems doubtful whether the whole provisions of this section are virtually repealed by section 4, sub-section 1, of the Conveyancing Act, which declares that it shall not be necessary in order to the completion of the title of any person that he shall obtain from the superior any charter, precept, or other writ by progress, and further enacts that it shall not be competent for the superior in any case to grant any such charter, precept, or other writ by progress. A procuratory of resignation *ad remanentiam*, which is granted by a person *qua superior* in favour of himself *qua vassal*, may be regarded as a writ by progress in the sense of this enactment; but a conveyance containing a clause of resignation *ad remanentiam*, granted by a vassal in favour of his superior, seems scarcely to fall under the same category. The whole forms authorised by this section of the Consolidation Act are, however, merely declared equivalent to an instrument of resignation duly recorded; and an instrument of resignation may possibly be regarded as a writ by progress granted by a superior, in respect that it proceeds upon the superior's acceptance of the resignation made on behalf of the vassal. See Juridical Styles, third edition, vol. i., p. 661.

Even, however, if the forms referred to are still competent, they are superseded by the short and simple mode of effecting consolidation provided by section 6 of the Conveyancing Act. No conveyancer, therefore, should now have recourse to resignation *ad remanentiam*.

SCHEDULE (K.)

Instrument of Resignation ad remanentiam (a).

At there was by [or on behalf of] *A.B.* [here insert the name and designation of the superior], presented to me, notary public subscribing, a disposition [or other deed or extract, as the case may be], dated the day of , granted by *C.D.* [here insert the name and designation of the vassal], being the vassal in the lands after described, holding the same of the said *A.B.* as his superior thereof, by which disposition the said *C.D.* disposed to the said *A.B.* and his heirs and assignees whomsoever [or as the case may be] all and whole [here insert description of the lands as in the disposition or other deed, &c.]; in virtue of which disposition [or other deed, &c.] the said lands were resigned in the hands of the said *A.B.* [or "in the hands of *E.F.*, as his commissioner duly authorized, conform to commission" (describe by date and other particulars), "as in the hands of the said *A.B.* himself"] [or "in the hands of *E.F.*, being the known agent of the

said *A.B.*, and as such duly authorized, in virtue of the Act of the 8th and 9th years of the reign of Her Majesty Queen Victoria, chapter 35, intituled 'An Act to simplify the Form and diminish the Expense of obtaining Infeftment in Heritable Property in Scotland,' as in the hands of the said *A.B.* himself"] ad perpetuam remanentiam and to the effect that the right of property of the foresaid lands and others might be united and consolidated with the right of superiority of the same in the person of the said *A.B.* in all time coming. Whereupon this instrument is taken by [or on behalf of] the said "*A.B.* and *C.D.*" in the hands of *Ec., as in Schedule (J.) to the end.*

(a) Now apparently incompetent. See note (a) *ante*, p. 58.

19. Notarial Instruments in favour of general Disponees (a).—Where a person shall have granted or shall grant a general disposition (b) of his lands (c), whether by conveyance *mortis causa* (d) or *inter vivos* (e), or by a testamentary deed or writing within the sense and meaning of the 20th (f) and 21st sections of this Act, and whether such general disposition shall extend to the whole lands belonging to the grantor, or be limited to particular lands belonging to him, with or without full description of such lands, and whether such general disposition shall contain or shall not contain a procuratory or clause of resignation, or a precept of sasine, or an obligation to infeft, or a clause expressing the manner of holding (g), it shall be competent to the grantee (h) under such general disposition to expedite and record in the appropriate register of sasines a notarial instrument in or as nearly as may be (i) in the form of Schedule (L.) hereto annexed; and on such notarial instrument or any similar notarial instrument expedite in virtue of any Act of Parliament hereby repealed (k) being so recorded, such grantee (h) shall be in all respects in the same position as if a conveyance of the lands contained in such notarial instrument had been executed in his favour by the grantor of the general disposition, to be holden, in the case of lands not held by burgage tenure (l), by such manner of holding, if any, as is expressed in the general disposition, and if no particular manner of holding is therein expressed, then to be holden in the manner and to the effect, and subject to the provisions enacted and provided in the sixth section of this Act in the case of conveyances in which no manner of

holding is expressed (*m*), and in the case of lands held by burgage tenure, to be holden of Her Majesty in free burgage (*l*), and as if such conveyance had been followed, where such lands are not held by burgage tenure (*l*), by an instrument of sasine of the said lands in favour of such grantee, or, where they are held by burgage tenure by an instrument of resignation and sasine thereof in his favour (*l*) expedite and recorded in the appropriate register of sasines at the date of recording such notarial instrument: Provided always that where such notarial instrument shall be expedite by a person other than the original grantee under such general disposition, it shall set forth the title or series of titles by which the person in whose favour it is expedite acquired right to such general disposition (*n*), and the nature of his right.

(*a*) This section re-enacts, with slight alterations and an addition to the description of the various deeds which are to be held as general dispositions in the sense of the section, the provisions of 8 and 9 Vict. c. 31, sec. 4, which took effect from and after 1st October 1845, as regards heritable securities; 21 and 22 Vict. c. 76, sec. 12, which took effect from and after 1st October 1858, as regards lands not held burgage; 23 and 24 Vict. c. 143, sec. 8, which took effect from and after 1st October 1860, as regards lands held burgage.

The object of the section is to enable the grantee of a general disposition of lands to obtain a real right thereto, without the intervention of the grantor's representatives or recourse to judicial proceedings. Apart from this statutory provision, a general disposition confers only a *jus actionis* or *jus ad rem*, and not a real right.

(*b*) A general disposition in the sense of this section is a deed intended to operate as a conveyance, but which, owing to certain wants, is not a sufficient warrant for obtaining in the ordinary way infeftment in the lands intended to be conveyed. The wants referred to are the want of a proper description of the lands, the want of the executorial or feudal clauses formerly required, and the want of words importing a conveyance *de presenti*.

By section 31 of the Conveyancing Act a decree of general service is rendered equivalent to a general disposition, to the effect of enabling the heir to expedite all notarial instruments that a general disponee may expedite under the Consolidation Act.

(*c*) By the interpretation clause (section 3, paragraph 13, *ante*, p. 8, the word "lands" extends to and includes all heritable subjects, securities, and rights; and section 53 of the Conveyancing Act, while providing a new form of instrument applicable to heritable

securities removes all doubts as to the present schedule being also applicable.

(d) Such as a trust-disposition and settlement in the usual style.

(e) Such as a marriage-contract or a trust-disposition for behoof of creditors.

(f) Extended by section 46 of the Conveyancing Act.

(g) None of the clauses here mentioned are now required even in a special conveyance. See sections 5 and 7, *ante*, pp. 21 and 27.

(h) Including, by the interpretation clause (section 3, paragraph 1), *ante*, p. 5, the grantee's heirs, successors, and representatives. See also the concluding proviso of the section.

(i) There must be no real deviation from the form provided in the schedule. See note (g), *ante*, p. 48.

(k) Viz., by section 4.

(l) By sections 25 and 26 of the Conveyancing Act the distinction between lands held burgage and lands held feu is abolished; and an instrument of resignation and sasine appears to be no longer competent. See note (a), *ante*, p. 52.

(m) The part of the sixth section here referred to is now virtually repealed; see *ante*, pp. 25 and 26.

(n) In the case of *Smith v. Wallace*, 26th November 1869, 8 Macph. 204, it was held that to enable a person other than the original grantee to complete a title in this way, he must have an assignation, general or special, of the general disposition. As a general disposition does not usually contain a clause of assignation of writs, this decision rendered it impossible to use two or more general dispositions as connecting links in the series of writs on which a title was to be made up. This, however, has been remedied by section 29 of the Conveyancing Act, which has a retrospective effect. Section 31 of the latter Act renders general services also sufficient links in the series of titles.

As to the effect of a general disposition in evacuating or superseding a special destination under which the granter holds particular lands, see the case of *Glendonwyn v. Gordon*, 20th July 1870, 8 Macph. 1075, and 19th May 1873, 11 Macph. (H.L.) 33; *Gray v. Gray's Trs.*, 24th May 1878, 5 Rettie 820; and *M'Farlane v. M'Brair*, 19th June 1878, 15 Scot. Law Rep. 636, and cases there referred to.

In the case of *Mackenzie v. Catton*, 29th January 1870, 8 Macph. 457, it was held that a notarial instrument expedite in the following circumstances was inept:—An heir of entail granted a *mortis causa* general disposition in favour of trustees for behoof of his daughter, and she obtained from them an assignation thereto. Having chal-

Page 61, foot

It is now authoritatively settled that, in the absence of evidence of a contrary intention, general words of disposition in a *mortis causa* deed are to be construed including heritable property vested at the date of the deed in the disponent, with special destination to heirs-substitute. — *Campbell v. Campbell*, Dec. 11, 1878, R. 310, affirmed July 8, 1880, 7 H.L. 100.

real burden or condition or qualification, add here, but always under the real burdens, &c.; and if the deed be granted in trust, or for specific purposes, add, but always in trust or for the uses and purposes mentioned in said general disposition, or otherwise as the case may be. If the person expeding the instrument be other than the original dispo^{ee} or grantor or legatee under the deed, add, as also there was presented to me (specify the title or series of titles by which such person acquired right, and the nature of his right.) (e)] Whereupon, &c. as in Schedule (J.) to the end (f).

Page 63, line 7.

The word "*grantor*," here occurring is obviously a mistake for "*grantee*."

(a) The stamp-duty is 5s.

(b) That is to say, the word "by" is to be used when the deed is presented to the notary by the party himself; and the words "on behalf of" are to be used when it is presented by his agent.

(c) In the event of the infeftment of C.D. having been effected by an instrument of sasine or by a notarial instrument, it is not necessary to present to the notary the conveyance or warrant for sasine upon which such instrument of sasine or notarial instrument proceeded. What is required in every case is the presentation of either a deed or an instrument recorded in the register of sasines, and constituting an infeftment in the subjects.

(d) An English will is now in the same position as a Scotch deed; and section 51 of the Conveyancing Act renders the production to the notary of the probate of a will, or the exemplification of such probate, equivalent to the production of the will itself.

(e) See note (m) *ante*, p. 61.

(f) See *ante*, p. 56.

20. *De præsenti words, or words of style, unnecessary in mortis causa deeds (a).*—From and after the commencement of this Act (b) it shall be competent to any owner of lands (c) to settle the succession to the same in the event of his death, not only by conveyances *de præsenti*, according to the existing law and practice (d), but likewise by testamentary or *mortis causa* deeds or writings, and no testamentary or *mortis causa* deed or writing purporting to convey or be-

queath lands which shall have been granted by any person alive at the commencement of this Act, or which shall be granted by any person after the commencement of this Act, shall be held to be invalid as a settlement of the lands to which such deed or writing applies, on the ground that the grantor has not used with reference to such lands the word "dispone" (*e*), or other word or words importing a conveyance *de presenti*; and where such deed or writing shall not be expressed in the terms required by the existing law or practice for the conveyance of lands, but shall contain with reference to such lands any word or words which would, if used in a will or testament with reference to moveables, be sufficient to confer upon the executor of the grantor, or upon the grantee or legatee of such moveables, a right to claim and receive the same, such deed or writing, if duly executed in the manner required or permitted in the case of any testamentary writing by the law of *Scotland* (*f*), shall be deemed and taken to be equivalent to a general disposition of such lands within the meaning of the 19th section hereof by the grantor of such deed or writing in favour of the grantee thereof, or of the legatee of such lands, and shall be held to create and shall create in favour of such grantee or legatee an obligation upon the successors of the grantor of such deed or writing to make up titles in their own persons to such lands and to convey the same to such grantee or legatee; and it shall be competent to such grantee or legatee to complete his title to such lands in the same manner and to the same effect as if such deed or writing had been such a general disposition of such lands in favour of such grantee or legatee, and that either by notarial instrument or in any other manner competent to a general disponse (*g*): Provided always that nothing herein contained shall be held to confer any right to such lands on the successors of any such grantee or legatee who shall predecease the grantor, unless the deed or writing shall be so expressed as to give them such right in the event of the predecease of such grantee or legatee (*h*).

(a) This section is an entirely new enactment (thus coming into operation from and after 31st December 1868), designed to remove a grievance arising out of feudal principles of conveyancing. As the law previously stood, a proprietor of Scotch heritage could not bequeath it in the same manner as moveable estate; the only way in which he could regulate the succession thereto was by a deed containing words of *de præsenti* conveyance, the word "dispone" being essential; and such a deed, even when signed abroad, required to be executed according to the strict formalities of the then law of Scotland. The result was that the plain intentions of testators were frequently frustrated, not only in the case of wills prepared in Scotland without professional aid, but also in the case of wills executed in England and other countries in perfect accordance with the formalities required by the law of the country in which they were executed. This grievance has been remedied by the present section, which places heritable estate in the same position as moveable estate as regards the mode by which it may be settled *mortis causa*. It is, however, to be observed that no alteration has been made on the law as to the capacity of the granter to make a *mortis causa* conveyance of his heritable estate; and accordingly a minor cannot, even with the consent of his curators, grant such a conveyance, though this rule does not apply to subjects which are heritable merely *destinatione*, not *sua natura*.—*Brand's Trs. v. Brand's Trs.*, 19th December 1874, 2 Rettie 258.

This enactment has been extended by the Conveyancing Act, section 27 of which renders unnecessary the use of the word "dispone" in *any* conveyance of heritage; and section 46 of which provides that trustees or executors appointed by a testamentary writing within the sense and meaning of the present section of the Consolidation Act may complete a title although the words of conveyance, grant, or bequest are not expressed to be in favour of such trustees or executors.

(b) The enactment is not limited to deeds *executed* after the commencement of the Act. As is plainly expressed a few lines lower down, the date to be taken into account is not the date of the execution of the deed, but the date of the granter's death. Accordingly, if the granter died subsequently to 31st December 1868 (the date of the commencement of the Act), the enactment is applicable, even although the deed may have been signed long before that date.

In the case of *Farquhar v. Farquhar's Trustee*, 3d November 1875, 3 Rettie 71, where the Court were called upon to construe the word "residue" occurring in a will in the English form executed in the year 1866 by a person who did not die till the year 1875, it was observed *obiter* by Lord Justice-Clerk Moncreiff and Lord Gifford that it was an important element of interpretation that the words of conveyance employed were not at the date of the will habile to convey heritage in Scotland. But this observation ought not to be regarded as applicable to every case in which residue has been conveyed prior to the year 1869 by words not then habile

to convey heritage. The evil intended to be remedied by the statute arose from popular ignorance of the technical terms which were habile to convey heritage, or to convey residue including heritage. Moreover, even assuming that the testator in bequeathing residue purposely made use of words of conveyance which he knew to be at the date of execution of his will insufficient to convey heritage, he should be presumed, on the same principle, to have also known of the alteration effected by the statute; and if he did not alter his will during the interval that elapsed between the commencement of the Act and his death, the fair presumption is that he acquiesced in the alteration of the meaning and effect of his will.

(c) Including, by the interpretation clause, "all heritable subjects, securities, and rights."

(d) A conveyancer called on to prepare a *mortis causa* conveyance of heritable estate ought to adhere to the old styles, the meaning and effect of which are quite settled, rather than make use of novel forms of expression which may give rise to disputes.

(e) The word "dispone" has been held essential in a *mortis causa* conveyance of heritage executed by a person who died prior to the commencement of the Consolidation Act;—*Kirkpatrick v. Kirkpatrick's Trustees*, 19th March 1873, 11 Macph. 551; affirmed on this point, 23d June 1874, 1 Rettie (H. L.) 37. Section 27 of the Conveyancing Act has no application to deeds coming into operation before the commencement of that Act.

(f) A testamentary writing must be either holograph or attested by two witnesses; see section 40 of the Conveyancing Act. It does not now require to be stamped; see the schedule to the Stamp Act of 1870. As regards notarial subscription in the event of the testator being unable to write, the only privilege that a testamentary writing now possesses over other deeds is that the Established Church minister of the parish in which the testator resides at the time of executing the deed may act as notary; see section 41 of the Conveyancing Act.

By the common law of Scotland, as well as by the Statute 24 and 25 Vict. c. 114, a will or testamentary writing is effectual as regards personal or moveable estate if it is executed according to the forms required by the laws of the country in which it is made. The effect of the present section of the Consolidation Act is to make such a will or testamentary writing effectual also as regards Scotch heritable estate. This was expressly decided in the case of *Connel's Trs. v. Connel*, 16th March 1872, 10 Macph. 627, where the Court held effectual to convey Scotch heritage a will containing a bequest of the testator's whole real and personal estate, executed in England according to the law of that country, but not authenticated with the

formalities then required by the law of Scotland. This decision has been recognised by section 51 of the Conveyancing Act, which renders probate a valid warrant for a notarial instrument.

(g) The meaning and effect of this section will be best understood by considering it as a whole, rather than by making observations on each clause. What the enactment aims at is the placing of heritable estate in the same position as moveable estate. As no particular form of words is absolutely necessary for the conveyance of moveable estate, so no particular form of words and no technical terms are henceforth to be necessary for the conveyance of heritable estate. In either case, no more is required than a distinct expression of the testator's concluded will, whether such expression is contained in a single writing or in several. But this does not affect the question whether in any particular case the testator intended to convey his heritable as well as his moveable estate. It is, however, no longer a question of technicality, but of ordinary judicial construction, whether heritage is or is not conveyed.

The following is an abstract of the decisions interpreting the meaning and effect of the section :—

In the case of *Pitcairn v. Pitcairn*, 25th Feb. 1870, 8 Macph. 604, a person possessed of both heritable and movable estate had left a testamentary writing in these terms:—“I hereby declare that A., my brother, shall not inherit any of my effects, but that they shall all descend to my brother B.” The First Division of the Court of Session held that the word “effects” did not include the heritable estate.

In the case of *Hardy's Trustees v. Hardy*, 13th May 1871, 9 Macph. 736, the circumstances were the following:—A farmer who held a lease of his farm destined to himself “and his heirs, the eldest heir female on failure of heirs male succeeding without division,” left a trust-deed of settlement in the following terms:—“I hereby appoint” certain parties to be trustees, “to do everything necessary for the comfort of my wife and family; that they entirely take charge of the farm, all means and moveables, until the youngest is 21 years of age, then to be an equal division amongst the three. . . . It must also be distinctly understood that should my present wife marry she shall get her legal claim, but shall have no influence or claim upon the children, or any management of the farm, without the trustees' consent. The whole arrangements are to be through the trustees. They shall also have power to retain or give up the farm as they see it of most advantage to the family.” The Second Division of the Court held that the terms of this settlement were sufficient to convey the lease to the trustees for the purposes of the trust.

In the case of *Robb's Trustees v. Robb*, 14th May 1872, 10 Macph. 692, a person who owned some house property left a testamentary writing in these terms:—“I, James Robb, proprietor and owner of a property on the west side of Hilltown, Dundee, presently numbered 36, 38, and 40, I do hereby bequeth to my two nephews,

Page 67, line 3.
In the case of
*Browne and
Others*, Nov. 4,
1882, 20 Scot.
Law Rep. 76, the
Second Division
expressed their
opinion that a
trust - settlement
executed accord-
ing to the law of
New Zealand, by
a person domici-
led in that
country, was
effectual to con-
vey heritage in
Scotland, with-
out any proced-
ure under section
39 of the Convey-
ancing Act.

namely, John and Alex. Robb, 8 houses belonging to me, with the ground in front of each tenement, . . . and my wish is that Peter Robb be one trustee and Alex. Smith the other." The First Division of the Court, affirming the judgment of the Lord Ordinary (Gifford), held that the two trustees above named had a title to sue an action of declarator against the testator's heir-at-law for the purpose of establishing the validity of the trust and making up titles to the house property; and found and declared that the will was valid and effectual as a *mortis causa* settlement of the whole heritable property belonging to the testator, which fell to be distributed among the parties named in the will.

In the case of *Edmond v. Edmond*, 30th January 1873, 11 Macph. 348, a person possessed of moveable property, and also of several long leases of heritable subjects, including a lease of an hotel in which he carried on business, left a testamentary writing in the following terms:—"I do hereby bequith, in event of my death before my wife Hannah Edmond, the whole of property either in money, bonds, debets, bussness, and other afficts whotsoever. . . . And I appoint Hannah Edmond, my wife, heir and executrix of this my last will and testiment." It was held by a majority of the First Division that these terms were not sufficient to operate as a general disposition of the testator's heritable estate. Lord Ardmillan dissented in so far as regarded the lease of the hotel, holding that the testator had effectually conveyed to his wife the business, the good-will of the business, and the house in which it was carried on. It does not appear that the Judges of the Division in which this decision was pronounced were aware of the prior decision of the other Division in the case of *Hardy's Trustees v. Hardy* above-mentioned; and expressions of opinion by the Lord President and Lord Deas, which seem to indicate that words of direct gift or conveyance are required to give right to heritable though not to moveable estate, were disregarded by the Lord Ordinary (Shand) and the Second Division in the next case. The expressions of opinion referred to were, it is to be observed, prior to the passing of the Conveyancing Act, section 46 of which sanctions the contrary construction of the present section.

In the case of *M'Leod's Trustees v. M'Leod*, 28th February 1875, 2 Rettie 481, the deed of settlement was in the following terms:—"I . . . do hereby nominate, constitute, and appoint the following persons, viz. . . . to be my trustees and executors, and the curators or guardians of my said children. . . . I hereby empower my said trustees to realise all my heritable and moveable property when they see fit, and to invest the proceeds. . . . And I empower my said trustees and executors . . . to intromit with my means and effects in every way competent to executors, guardians, tutors, or curators, and to sue for and discharge all debts or claims due to me. The whole residue of my estate will be divided equally amongst my said children on their attaining majority." The deed contained no words of direct conveyance to the trustees, either of the testator's heritable or of

his moveable estate. The trustees therefore raised action against the testator's heir-at-law, concluding that he should be ordained to make up titles to the testator's lands, and convey the same to them. The Second Division, affirming the judgment of the Lord Ordinary (Shand), held that the deed was sufficient to carry the testator's heritable as well as his moveable estate; and it was observed by all the judges that the statute puts heritage precisely in the same position as moveables.

In the Special Case of *Pringle and Others*, 14th November 1877, which is very briefly reported in 15 Scot. Law Rep. 89, the Second Division held that heritable estate was carried by testamentary writings, in the following circumstances (which have been ascertained by an examination of the printed papers furnished by the counsel in the case). A. granted a general disposition and settlement in proper legal form to B., whom failing to C., containing the following special conveyance:—"And specially, without prejudice to the above general conveyance, I do hereby dispoise and make over to and in favour of the said B., whom failing the said C., all and whole that dwelling-house," &c., No. 5 India Street, particularly described. A. was survived by both B. and C. Thereafter B. died (in June 1876) leaving a holograph settlement in favour of C. (who was her sister) in the following terms:—"I do hereby leave and bequeath all the moveable and personal estate which shall belong to me at the time of my death to C., whom I hereby nominate and appoint to be my sole executrix and universal legatory; but under the burden always of paying my just and lawful debts, my deathbed and funeral expenses, also any presents as specified by me. And this I declare to be my last will and testament." B. also left a holograph writing bearing the same date as the settlement, and titled "Letter of Instructions to C., as referred to in my deed of settlement," in the following terms:—"In the event of my predeceasing you . . . you will see from my deed of settlement that I have placed all my available funds, &c. &c., in your hands as my last remaining sister, feeling assured, as I do, that with you every wish on my part, as here specified, will be made good by you. The amount of my capital at this date I believe to be £4600. £3350 is invested with Miss D., of Farmhill, partly in mortgage on said property, and partly in other ways, as you are aware, with her. In addition to the above-mentioned sum of £3350, I hold in house property, invested in house No. 5 India Street (according to value put upon it by Mr E., house-agent, in the year 1873), £1250, making this in all £4600, which I hereby request may be appropriated by you in the following way"—and then followed a number of pecuniary bequests, amounting in all to £4560. After B.'s death, C. made up a title to the house referred to, by notarial instrument, as heir of provision under A.'s general disposition and settlement, and then sold the house for £1225. In these circumstances the Court held that the testamentary writings of B. operated as a conveyance of the house, to the effect of evacuating the destination

Pages 69 and 70.

In somewhat special circumstances, which cannot be detailed here, the First Division held (*diss.* Lord Mure, *rev.* judgment of Lord Curriehill), that a testator's heritable property was not carried by a will which contained a bequest of "the residue of my estate."—*Urquhart v. Dewar*, June 13, 1879, 6 R. 1026. In a more recent case the Second Division held that heritage was conveyed by a settlement which directed a trustee to sell "the remainder of my property wherever situated," and pay certain legacies, which the moveable estate would have been quite insufficient to meet.—*Nicolson v. M'Leod*, June 28, 1883, 20 Scot. Law Rep. 714. In *Aim's Trustees v. Aim*, Dec. 15, 1880, 8 R. 294, the Second Division held that a testator's heritage was carried by a holograph document in the following terms:—"All furniture, books, and personal effects to Mrs

in the settlement of A., and making the price of the house available for the payment of the legacies bequeathed by B.

As to the mode in which trustees or executors may now complete a title to land in cases where the words of conveyance, grant, or bequest are not expressed to be in their favour, see section 46 of the Conveyancing Act.

(h) But for this proviso, the words grantee and legatee occurring in this section, would, under the interpretation clause (section 3, paragraph 1), *ante*, p. 5, have extended to and included the heirs, successors, and representatives of the grantee or legatee.

21. Trustee or Executor to apply lands for purposes of Trust or Will (a).—Where such testamentary or *mortis causa* deed or writing (b) shall be conceived in favour of a grantee as trustee or executor of the grantor, and shall not be expressed to be wholly in favour of such trustee or executor for his own benefit (c), such trustee or executor shall apply such whole lands for the purposes specified in such deed or writing; and where such purposes cannot, in whole or in part, be carried into effect (d), or where no purposes with reference to such lands have been or shall be specified in such deed or writing, such trustee or executor shall convey such lands, or so much thereof, or shall apply so much of the proceeds thereof, if such lands shall have been sold and realized by him, as may not be required for the purposes of such deed or writing, to or for behoof of the person or the successors of the person who, but for the passing of this Act and the granting of such deed or writing, would have been entitled to succeed to such lands on the death of such grantor (e).

(a) This section is a new enactment, thus taking effect from and after 31st December 1868, framed for the purpose of preventing the preceding section being supposed to have in any case rendered a bequest of heritable property moveable as regards succession.

(b) Viz., as is mentioned in the preceding section.

(c) In the case of *Wilson v. Lindsay*, 19th Jan. 1878, 5 Rettie 539, a testamentary writing by a wife, addressed to her husband, in

John Aim absolutely, and the free liferent use of all my other means and estate. After Mrs A.'s decease, the whole of the estate to be turned into cash at the time my trustees deem most suitable for best realising, and proceeds safely invested for discharging as under," &c

In *Studd v. Studd*, Dec. 10, 1880, 8 R. 249, affirmed May 8, 1883, 20 Scot. Law Rep. 566, an Englishman having left a will purporting to entail in the English form, *inter alia*, heritage in Scotland on his son and certain substitute heirs, it was held that his intention, though involving restrictions and limitations not capable of being precisely expressed or carried out by Scotch law, must receive effect in so far as the law of Scotland would allow, that effect being to give the son merely a liferent alienably with certain powers, and the heir-male of his body the fee.

In *Farguharson v. Farguharson*, July 19, 1883, 20 Scot. Law Rep. 836, the Second Division were of opinion that land was not carried by the following words occurring in a mutual settlement executed by a husband and wife, neither of whom was at the date thereof possessed of heritage,—“all and sundry goods, gear, debts, effects, sums of money, heritable and moveable, household plenishing and furniture, and others whatsoever,” that should pertain to either at death.

the following terms, was held to import not a trust but an absolute disposition to the grantee:—"I wish to leave everything that may be considered mine—money or personal property—entirely at your disposal, knowing that you will do what I wish with it. . . . I would like you from the interest of my money to give K. W., J. W., and last, not least, yourself, a handsome remembrance of me, although they would require to wait some time."

Page 71, after line 7.

Insert the following notes accidentally omitted by the printer.

(d) For example, where the purposes are illegal, or where bequests have lapsed and there is no residuary legatee.

(e) That is to say, the heir-at-law of the grantor, except where the lands are held under a special destination.

22. (a) *Assignations to unrecorded Conveyances* (b).

—It shall be competent to any person having right to an unrecorded deed or conveyance (c), whether granted in favour of himself or originally granted in favour of another person (d), to assign the deed or conveyance (e) in or nearly as may be (f) in the form No. 1. of Schedule (M.) to this Act annexed, setting forth the deed or conveyance, and the title or series of titles, if any, by which he acquired right to the same, and the nature of the right assigned; and the assignation, or, in the event of there being more than one, the successive assignations, may be recorded in the appropriate register of sasines along with the deed or conveyance itself, and a warrant of registration thereon (g), in or as nearly as may be (f) in the form No. 2. of Schedule (H.) hereto annexed (h); and it shall be competent to write the assignation or assignations on the deed or conveyance itself (i), in or as nearly as may be (f) in the form No. 2. of Schedule (M.) hereto annexed, setting forth the deed or conveyance and the title or series of titles, if any, by which such person acquired right to the same, and the nature of the right assigned; in which case the assignation or assignations and the deed or conveyance may be so recorded along with the warrant of registration thereon, which warrant shall be in or as nearly as may be (f) in the form No. 1. of Schedule (H.) hereto annexed (k); and the deed or conveyance, with the warrant of registration, and the assignation or assignations, separate from the deed or conveyance, and those written upon the deed or conveyance, if any, and all similar assignations granted before the commencement of this Act, being so recorded,

shall operate in favour of the assignee on whose behalf they are presented for registration, as fully and effectually as if the lands contained in the assignation, or, if there be more than one, in the last assignation, had been disposed by the original deed or conveyance in favour of such assignee, and the deed or conveyance, with the warrant of registration, had been recorded, in the manner herein-before provided, of the date of recording such deed or conveyance and assignation or assignations (*l*); and all deeds or conveyances with a warrant of registration and assignation or assignations written thereon, or with an assignation or assignations separate therefrom, that may have been so recorded before the commencement of this Act (*m*), shall operate in favour of the assignees on whose behalf the same shall have been so recorded, as effectually as is herein-before provided in regard to a recorded deed or conveyance, with a warrant of registration and assignation or assignations written thereon, notwithstanding that such assignation or assignations may not have been docquetted with reference to such warrant, or referred to therein as being so docquetted (*n*).

(*a*) This is one of the sections substituted by the Amendment Act of 1869 to be read and construed as if it had originally been the 22d section of the Consolidation Act. See note (*a*), *ante*, p. 1, and note (*a*), *ante*, p. 3.

The only difference between the repealed and the substituted section is that the latter contains the addition, in the last clause, of the words "or with an assignation or assignations separate therefrom," designed to correct an oversight pointed out in note (*n*) *infra*.

(*b*) This section re-enacts, with some additions, provisions of 21 and 22 Vict. c. 76, sec. 13, which took effect from and after 1st October 1858, as regards lands not held burgage; and 23 and 24 Vict. c. 143, sec. 9, which took effect from and after 1st October 1860, as regards lands held burgage.

The object of the enactment is to provide a short and simple mode by which a disponent who has not taken infeftment may transfer to another person his personal right to the lands disposed. This was formerly accomplished by means of a disposition and assignation, a deed narrating at full length the original disposition, conveying it and the lands, and specially assigning the unexecuted

procuratory of resignation and precept of sasine contained in the original disposition. This section authorises the use, in place of this lengthy deed, of either of two short forms of assignation, the one being written on the conveyance, and the other being a deed apart.

(c) As to the various writs included in the words "deed or conveyance," see section 3, paragraph 7, *ante*, p. 6.

Of course this section is not intended to apply to the case of a person already infeft by means of an instrument of sasine or a notarial instrument, though such person may, in one sense, be said to have right to an unrecorded deed or conveyance.

The new forms are not well adapted to the case of a partial assignation of the disposition and lands therein contained.

(d) That is to say, whether such person is the original disponee, or the assignee of such disponee, or the assignee of such assignee, &c.

(e) What is conveyed is not the lands but the original conveyance of the lands, thereby merely putting the assignee in the position of the original disponee.

(f) There must be no real deviation from the form provided in the Schedule.

(g) That is to say, on the deed or conveyance itself, and not on the assignation.

(h) The form referred to is printed *ante*, p. 49-50.

(i) If the sheet on which the deed or conveyance is written is not sufficient to contain the assignation or assignations, additional sheets may be added. See section 140.

(k) The form referred to is printed *ante*, p. 49.

(l) That is to say, shall operate as an infeftment of the assignee as at the date of recording.

(m) That is to say, from and after 31st December 1868, this amended and substituted section being regarded as the original section; see note (a), p. 1.

(n) The statutes now consolidated appeared from the form of warrant of registration they provided to contemplate the use of a docquet in the case of assignations separate from the conveyance, but did not enact that such docquet should be used, and the

relative schedules did not provide any form of docquet. Doubts were consequently entertained as to the validity of separate undocqueted assignments, and to remove these the declaration at the end of this section was added. Unfortunately, however, the declaration as originally framed was made applicable solely to the case where a docquet was not required, viz., to assignments written upon the conveyance. To correct this mistake, the section as now printed was substituted by the Amendment Act of 1869 in place of the original section. The amendment consists in the addition of the words "or with an assignation or assignations separate therefrom;" it ought to have consisted in the *substitution* of the words "with an assignation or assignations separate therefrom," in place of the words "assignation or assignations written thereon." This mistake, however, is obviously of no consequence.

This declaration dispensing with the docquet is applicable only to assignments recorded prior to the commencement of the Consolidation Act, which by note to Schedule (M.) No. 1, makes a docquet essential thereafter in the case of assignments separate from the conveyance.

SCHEDULE (M.)

No. 1.

Assignation of an unrecorded Conveyance (a).

I, *A.B.*, in consideration of, &c. [*or otherwise, as the case may be*], hereby assign to *C.D.*, and his heirs and assignees [*or otherwise, as the case may be*], the disposition [*or other deed, as the case may be*] granted by *E.F.*, dated, &c., by which he conveyed the lands of *X. (b)*, as therein described, to me [*or otherwise, as the case may be, specifying the connecting title, if any, and the nature of the right conveyed or assigned. State the term of the assignee's entry, and other particulars, if any, which ought to be specified (c).*] In witness whereof [*insert a testing clause in the usual form (d)*].

NOTE.—Before being presented for registration along with the disposition or other deed and warrant of registration thereon, the assignation must be docqueted in or as nearly as may be (e) in the form following, viz.:

“ Docquetted with reference to warrant of registration on behalf of *C.D.*, written on the said disposition [*or other deed, as the case may be*].”

The docquet shall be signed by the person or his agent or agents signing the warrant (*f*).

No. 2.

Assignment of an unrecorded Conveyance written upon the Conveyance (a).

I, *A.B.*, in consideration of, &c. [*or otherwise, as the case may be*], hereby assign to *C.D.*, and his heirs and assignees [*or otherwise, as the case may be*], the foregoing disposition [*or other deed, as the case may be*] of the lands of *X.* (*b*), as therein described, granted in my favour [*or otherwise, as the case may be, specifying the connecting title and the nature of the right conveyed or assigned. State the term of the assignee's entry, and other particulars, if any, which ought to be specified* (*c*)]. In witness whereof [*insert a testing clause in the usual form* (*d*)].

(*a*) The stamp-duty is the same as in the case of a disposition of the lands for the same consideration.

(*b*) By “the lands of *X.*” is meant the general name of the lands, or such short description as may sufficiently connect the assignment with the disposition.

(*c*) Such as clauses assigning the writs and rents, relieving the assignee of feu-duties, public burdens, &c., prior to the date of entry, granting warrandice, and consenting to registration. See style of disposition in Schedule (B.) No. 1, *ante*, p. 23.

(*d*) See section 38 of the Conveyancing Act as to the present requisites of the testing clause.

(*e*) There must be no real deviation from the form here provided.

(*f*) In the same manner as they sign the warrant of registration.

23. *Notarial Instruments in favour of parties acquiring rights to unrecorded Conveyances (a).*—It shall be competent to any person having right (b) to an unrecorded deed or conveyance (c) originally granted in favour of another person to expedite a notarial instrument, in or as nearly as may be (d) in the form of Schedule (N.) hereto annexed, setting forth the deed or conveyance and the title or series of titles by which he acquired right to the same (b), and the nature of his right, and to record the deed or conveyance, with warrant of registration thereon, in the form or as nearly as may be (d) in the form of No. 2. of Schedule (H.) hereto annexed (e), and also the notarial instrument (f), in the appropriate register of sasines; or, where it is not desired to record the whole of the deed or conveyance, it shall be competent to expedite a notarial instrument in or as nearly as may be (d) in the form of Schedule (J.) hereto annexed (g), setting forth generally the nature of the deed or conveyance, and containing those portions of the deed or conveyance by which the lands in regard to which the said instrument is expedite are conveyed, and by which real burdens, conditions, provisions, or limitations, if any, are imposed, and also setting forth the title or series of titles by which the party acquired right to the deed or conveyance (b), and to record such notarial instrument in the appropriate register of sasines; and on the deed or conveyance, with such warrant of registration thereon, and such notarial instrument in the form of the said Schedule (N.), or any similar deed or conveyance with warrant of registration and notarial instrument expedite in virtue of any Act of Parliament hereby repealed (h), being so recorded, or on such notarial instrument in the form of the said Schedule (J.), or any similar notarial instrument expedite in virtue of any Act of Parliament hereby repealed (h), being so recorded, the person in whose favour the deed or conveyance and instrument, or the instrument, have or has been or shall be expedite and so recorded, shall be in the same position as if the original deed or conveyance had been granted to

himself, and, along with a warrant of registration thereon, had been recorded in the manner herein-before provided (*i*), of the date of recording the deed or conveyance and notarial instrument or the notarial instrument (*k*).

(*a*) This section re-enacts, with verbal alterations, the provisions of 8 and 9 Vict. c. 31, sec. 4, which took effect from and after 1st October 1845, as regards heritable securities; 21 and 22 Vict. c. 76, sec. 14, which took effect from and after 1st October 1858, as regards lands not held burgage; 23 and 24 Vict. c. 143, sec. 10, which took effect from and after 1st October 1860, as regards lands held burgage.

The object of the section is to provide a simple mode by which any person having right to an unrecorded conveyance may obtain infeftment, without recording the series of titles by which he obtained right. Two forms of notarial instrument are provided, either of which may be used for this purpose, the one requiring to be recorded along with, and the other without the original conveyance.

(*b*) By general conveyance, service, adjudication, assignation, or otherwise. Two or more general dispositions may now be used as connecting links in the series of titles. See section 29 of the Conveyancing Act.

(*c*) As to the writs included in the words "deed or conveyance," see section 3, paragraph 7, *ante*, p. 6.

(*d*) There must be no real deviation from the form here provided.

(*e*) The form referred to is printed *ante*, p. 49-50.

(*f*) This form of notarial instrument must now be docqueted in the form printed in the schedule. Under the former statutes a docquet was not essential.

(*g*) The form referred to is printed *ante*, p. 56. This seems the preferable of the two forms authorised by this section, as it dispenses with the recording of the conveyance and the docqueting of the notarial instrument.

(*h*) Viz., by section 4, *ante*, p. 9.

(*i*) Viz., by section 15, *ante*, p. 46.

(*k*) That is to say, such person shall be infeft as at the date of recording.

SCHEDULE (N.)

Notarial Instrument (a) in favour of an Assignee (b) to an unrecorded Conveyance to be recorded along with the Conveyance.

At there was by [*or on behalf of*] (c) *A.B.* of *Z.* presented to me, notary public subscribing, a disposition [*or other deed or extract, as the case may be, specifying the nature of the deed*] granted by *C.D.* of *Y.*, and dated [*insert date*], by which disposition the said *C.D.* conveyed to *E.F.* all and whole the lands of *X.* (d) as therein described, and which disposition is to be recorded along with this instrument; as also there was presented to me [*specify the title or series of titles by which A.B. acquired right (e), and the nature of his right*]. Whereupon, &c., as in *Schedule (J.) (f)* to the end.

NOTE.—Before being presented for registration along with the disposition or other deed and warrant of registration thereon, the notarial instrument must be docqueted in or as nearly as may be in the form following, viz.:
 “Docqueted with reference to warrant of registration on behalf of *A.B.*, written on the said disposition [*or other deed as the case may be*].” The docquet shall be signed by the person or his agent or agents signing the warrant (g).

(a) The stamp-duty is 5s.

(b) Including any person who has right to the unrecorded conveyance. See note (b) *ante*, p. 77.

(c) The word “by” is to be used where the presentation is made by the party himself, and the words “on behalf of” are to be used where it is made by the party’s agent.

(d) Give the general name of the lands, or, if there be no general name, such short description as may be sufficient to connect the instrument with the conveyance.

(e) See note (b) *ante*, p. 77.

(f) Schedule (J.) is printed *ante*, p. 56.

(g) In the same manner as the warrant itself.

24. (a) *Mode of completing Title by a Judicial Factor on a Trust-Estate, &c.* (b).—Where in a petition (c) to the Court of Session for the appointment of a judicial factor or (d) authority has been or shall be asked for the completion of a title by such factor to any lands (e) forming the whole or part of the estate to be managed by such judicial factor, or where a judicial factor (d) has applied or shall apply, by petition or note, to the said Court for authority to complete a title to such lands, either in his own person as judicial factor, or in the person of any pupil, minor, or lunatic to whom he may have been appointed judicial factor (f), and where any petition or note has specified and described or shall specify and describe the lands (e) to which such title is to be completed, or has referred or shall refer to the description of the same, in the form or as nearly as may be (g) in the form, of Schedule (E.) hereto annexed (h), or of Schedule (G.) hereto annexed (s), as the case may be, the warrant granted for completing such title shall also so specify and describe the lands (e) to which such title is to be completed, or shall so refer to the description thereof (i); and such warrant shall be held to be a conveyance in due and common form of the lands (e) therein specified in favour of such judicial factor granted by the person, whether in life or deceased, whose estate is under judicial management, or where the estate is that of a pupil, minor, or lunatic, in whose person a title has not (k) been made up, such warrant shall be held to be such a conveyance in favour of the pupil, minor, or lunatic, or of the judicial factor appointed to such pupil, minor, or lunatic (l), as the case may be, granted by a predecessor, or author having such title, or where such judicial

Page 79, line 4
of section 24.

For the words
"fact or," read
the word "fac-
tor."

factor has been or shall be appointed on an estate which shall have been vested in a trustee or former judicial factor, such warrant shall be held to be such a conveyance granted by such trustee or former judicial factor, whether in life or deceased (*m*), for the purposes of such estate or trust or factory, to be holden, in the case of lands not held by burgage tenure, in the manner and to the effect and subject to the provisions enacted and provided in the sixth section of this Act in the case of conveyances in which no manner of holding is expressed (*o*), and in the case of lands held by burgage tenure, to be holden of Her Majesty in free burgage (*n*); and such warrant may, with warrant of registration thereon, be recorded in the appropriate register of sasines as a conveyance in favour of such judicial factor or pupil, minor, or lunatic, or of the factor on his estate, and being so recorded, shall have the same force and effect as if at the date of such recording such conveyance had been granted to the judicial factor or pupil, minor, or lunatic, or the judicial factor appointed to such pupil, minor, or lunatic, as the case may be, and recorded in the appropriate register of sasines (*p*): Provided always, that for enabling the person in whom such lands were last vested, or his representatives, or other parties interested, to bring forward competent objections against such warrant being granted, or claims upon the estate, the Court shall order such intimation and service of the petition or note as to them shall seem proper (*q*): Declaring always, that the whole enactments and provisions herein contained shall extend and apply to all petitions to and warrants by the Court of Session under "The Trusts (Scotland) Act, 1867," unless in so far as such provisions and enactments may be inapplicable to the form or objects of such petitions or warrants (*r*).

(*a*) This is one of the sections substituted by the Amendment Act of 1869. See note (*a*), *ante*, p. 1, and note (*a*), *ante*, p. 3-4.

The amendment consists in the insertion of the clauses applicable to the case of completing a title in the person of a pupil, minor, or lunatic. As the section originally stood, it was limited to the case of a judicial factor completing a title in his own person.

(b) This section re-enacts, with considerable additions, the provisions of 21 and 22 Vict. c. 76, sec. 21, which took effect from and after 1st October 1858, as regards land not held burgage; and 23 and 24 Vict. c. 143, sec. 38, which took effect from and after 1st October 1860, as regards land held burgage.

The object of the section is to simplify the procedure by which a judicial factor may make up titles to the estate under his management. There is nothing in the terms of this section to suggest that its operation is limited to cases where the person whose estate is under judicial management, or the trustee or former factor, was infert. Formerly it was necessary for the judicial factor, after his appointment, to apply to the Court for authority to make up titles, and on obtaining it raise an action of adjudication. See Bell's Lectures on Conveyancing, first edition, p. 928.

Section 44 of the Conveyancing Act contains an improved provision, under which the interlocutor making the appointment of a new trustee or judicial factor, on being recorded, operates infertment; but the provision is restricted to cases where a trust title has been already completed and recorded, and is apparently not applicable to curators *bonis*, factors *loco tutoris*, or factors *loco absentis*, these officers not being expressly included in the terms "judicial factor" as used in the Conveyancing Act, and the context of the provision being rather repugnant to their being so included. Doubts have been expressed by Dr Mowbray, W.S. (Hendry's Styles, p. 121) as to the effect of this section of the Conveyancing Act, combined with section 67, which repeals generally all statutes at variance with the provisions of the Conveyancing Act. There seems, however, to be no ground for supposing that the Conveyancing Act operates as a repeal of the section of the Consolidation Act now under consideration in cases where the trust title has not been already completed and recorded, seeing that section 44 of the Conveyancing Act is expressly restricted to the case of a trust title having been already completed and recorded. But recourse must be had to the provision of the Conveyancing Act, where previous trustees or judicial factors, properly so called, have already taken infertment.

(c) Under the corresponding sections of the statutes now consolidated, a judicial factor required, after his appointment, to present a special application for authority to make up titles. The Trusts Act of 1867 (30 and 31 Vict. c. 97, sec. 15) first permitted an application for such authority to be contained in the original petition for the appointment of the factor, and this is rendered competent also by the present section; but the practice of the Court is first to appoint the factor, and thereafter, on his motion, to grant the authority craved. See the case of *Russell v. Russell*, 14th November 1874, 2 Rettie 93, which, though not exactly in point, illustrates the general practice of the Court.

(d) Including, by section 3, paragraph 16, *ante*, p. 8, judicial factors or curators *bonis* to persons under incapacity, factors *loco tutoris*, factors *loco absentis*, and all judicial managers.

Page 81, end of note (c).

By the Judicial Factors (Scotland) Act 1880 (43 and 44 Vict. c. 4), power is given to Sheriffs and Sheriff-Substitutes to appoint judicial factors, meaning thereby a factor *loco tutoris*, or a curator *bonis*, in small estates; but the present section of the Consolidation Act has not been made applicable to judicial factors so appointed.

(e) Including, by section 3, paragraph 13, *ante*, p. 8, all heritable subjects, securities, and rights. There seems to be nothing in the context of this section against the term "lands" being held to include heritable securities.

(f) Where there is a ward, pupil, minor, or lunatic, it is in his person that the title should be completed; and, on the other hand, where a judicial factor is appointed on a trust estate in consequence of the non-acceptance or death of the trustees, &c., it is necessary, there being no existing *dominus* of the estate, that the title be completed in the person of the judicial factor. See the case of *Scott*, 21st February 1856, 18 D. 624, where it was expressly held that a curator *bonis* is *in titulo* to convey his ward's estate although the feudal title be completed in the person of the ward; and the opinion of Lord Curriehill and other judges in the case of *Maconochie*, 3d February 1857, 19 D. 372. The inconveniences resulting from making up titles in the person of a judicial guardian, instead of in the person of the ward, are illustrated by the case of *Duff v. Gorrie*, 23d May 1849, 11 D. 1054, and are only partially remedied by section 14 of the Trusts Act, quoted in note (r) *infra*. It is, however, believed that there is a great deal of erroneous practice in this matter, though the Court are in such cases in the habit of disallowing the expense incurred by a judicial guardian at the expiration of his office in conveying the estate from himself to his ward.

It may be observed that section 9 of the Conveyancing Act, by vesting a personal right to lands in heirs without service or other procedure, has rendered it unnecessary in most cases for a judicial guardian to make up titles at all, unless he requires to sell or burden the lands.

(g) There must be no real deviation from the form prescribed.

(h) For the words "Schedule (E) hereto annexed," substitute the words "Schedule O. annexed to the Conveyancing Act." See section 11, *ante*, p. 39, and section 61 of the Conveyancing Act.

(i) Such description by reference merely was for the first time authorised by the present enactment.

(k) Already.

(l) See note (f) *supra*.

(m) Section 44 of the Conveyancing Act seems to operate a repeal of this clause in the case of judicial factors on trust-estates, but not in the case of curators *bonis*, factors *loco tutoris*, or factors *loco absentis*. See note (b) *supra*.

(n) By section 25 of the Conveyancing Act the distinction between lands held feu and lands held burgage is abolished, *inter alia*, in so far as regards the completion of titles.

(o) The part of the sixth section here referred to is now virtually repealed; see *ante*, pp. 25 and 26.

(*p*) The effect of this enactment is anomalous—the mere recording of the warrant completes the title of the judicial factor or of the ward, as the case may be, no matter whether the title previously stood on a completed infestment or on a personal right to the lands.

By section 3, paragraph 7, *ante*, p. 6, warrants to judicial factors, &c., to make up titles are included in the words “deed” or “conveyance.”

(*q*) The petition or note generally prays for intimation on the walls and in the minute book in common form, for service on such of the parties interested as are not themselves applicants in the petition or note, and for an order on them to lodge answers, if so advised, within eight days.

(*r*) The following are the provisions of the Trusts Act of 1867 (30 and 31 Vict. c. 97) here referred to:—

“12. *Appointment of new Trustees by the Court.*—When trustees cannot be assumed under any trust deed, or when any person who is the sole trustee acting under any such trust deed has become insane, or incapable of acting by reason of physical or mental disability, the Court may, upon the application of any party having interest in the trust estate, after such intimation and inquiry as may be thought necessary, appoint a trustee or trustees under such trust deed, with all the powers incident to that office; and on such appointment being made, in the case of any person becoming insane or incapable of acting as aforesaid, such person shall cease to be a trustee under such trust deed; and the Court may on such application grant a warrant to complete a title to any heritable property forming part of the trust estate in favour of the trustee or trustees so appointed, which warrant shall specify and describe the heritable property to which it is applicable, and shall also specify the moveable or personal property, or bear reference to an inventory appended to the petition to the Court in which such moveable or personal property is specified; and such warrant shall be effectual as a conveyance of such heritable property in favour of the trustee or trustees so appointed, in like manner and to the same effect as a warrant in favour of a judicial factor granted under the authority of the 38th section of ‘The Titles to Land (Scotland) Act 1860,’ and shall also be effectual as an assignation of such moveable or personal property in favour of the trustee or trustees so appointed.

“14. *Completion of Title by the Beneficiary of a lapsed Trust.*—When any person shall be entitled to the possession for his own absolute use of any heritable property or moveable or personal property the title to which has been taken in the name of any trustee, or *curator bonis*, or factor *loco absentis*, or factor *loco tutoris*, or judicial factor, or other person who has died or become incapable of acting, without having executed a conveyance of such property, it shall be lawful for the person beneficially entitled to such pro-

“ perty to apply by petition to the Court for authority to complete
 “ a title to such property in his own name, and such petition shall
 “ specify and describe the heritable property, and refer to an inven-
 “ tory in which the moveable or personal property is specified, to
 “ which such title is to be completed ; and after such information
 “ and inquiry as may be thought necessary it shall be lawful for
 “ the Court to grant a warrant for completing such title as aforesaid,
 “ which warrant shall specify and describe the heritable property to
 “ which it is applicable, and shall also specify the moveable or per-
 “ sonal property, or shall bear reference to an inventory appended
 “ to the petition in which such personal property is specified ; and
 “ such warrant shall be effectual as a conveyance of such heritable
 “ property in favour of the petitioner in like manner and to the same
 “ effect as a warrant in favour of a judicial factor granted under the
 “ authority of the 38th section of ‘ The Titles to Land (*Scotland*)
 “ Act, 1860,’ and shall also be effectual as an assignation of such
 “ moveable or personal property in favour of the petitioner.”

It has been held that section 14, above quoted, applies only to a beneficiary, and not to the assignee of a beneficiary.—*Macknight*, 20th March 1875, 2 *Rettie* 667.

“ The Titles to Land (*Scotland*) Act, 1860,” referred to in the sections above quoted, is one of the statutes repealed by section 4 of the present Act, section 163 of which, however, provides that, “ notwithstanding the repeal of the said Acts, the same shall be held to be still in force so far as regards any reference which may be made to them or any of them in any statute not hereby repealed, and to the effect of giving full effect to such reference.”

(s) Schedule (G.) is printed *ante*, p. 45.

25. Mode of completing Title by a Trustee in Sequestration, and by Liquidators of Joint Stock Companies (a).—It shall be competent to a trustee on a sequestrated estate (b), or to liquidators, official or voluntary, appointed for the purpose of winding up a joint stock company (c), to expedite a notarial instrument, setting forth the act and warrant of confirmation in favour of such trustee, or the appointment of such liquidators, official or voluntary, respectively, and specifying the lands belonging to the bankrupt or company to which a title is to be completed, and the title by which such lands are held by the bankrupt or company, in or as nearly as may be (d) in the form of Schedule (O.) hereto annexed (e), and when the lands consist of heritable securities by a notarial instrument in or as nearly as may be (d) in the form of Schedule

(LL.) hereto annexed, and to record such notarial instrument in the appropriate register of sasines; and on such notarial instrument or any similar notarial instrument expedite in virtue of any Act of Parliament hereby repealed (*f*) being so recorded, the trustee or liquidators in whose favour the same shall have been or shall be so recorded shall be held to be in all respects in the same position as if the bankrupt or company, or any previous trustee or liquidator, had granted a conveyance of the lands contained in the notarial instrument in favour of such trustee or such liquidators, to be holden in the case of lands not held by burgage tenure in the manner and to the effect, and subject to the provisions enacted and provided in section sixth hereof in the case of conveyances where no manner of holding is expressed (*h*); and in the case of lands held by burgage tenure to be holden of Her Majesty in free burgage (*g*), and as if such conveyance had been recorded or followed by an instrument of sasine, or of resignation and sasine (*i*), or notarial instrument, in favour of such trustee or of such liquidators, duly expedite and recorded in the appropriate register of sasines at the date of recording such notarial instrument (*k*).

(a) This section merely re-enacts, with verbal alterations, the provisions of 21 and 22 Vict. c. 76, sec. 22, which took effect from and after 1st October 1858, as regards lands not held burgage; and 23 and 24 Vict. c. 143, sec. 15, which took effect from and after 1st October 1860, as regards lands held burgage. The object of the section is to provide a simple mode by which infestment may be taken by a trustee in a sequestration or liquidators of joint stock companies.

(b) Under the Bankruptcy Act of 1856 (19 and 20 Vict. c. 79), the trustee may sell the bankrupt's heritable estate without making up a feudal title thereto; see sections 102 and 105 of that Act. But as a disponee or a heritable creditor who has acquired right from the bankrupt prior to the sequestration, may, by taking infestment before the trustee, obtain a preferable title, the trustee ought to make up a feudal title in his own person wherever it is requisite to exclude such preferences.

(c) Under the Companies Acts of 1862 and 1867.

(d) There must be no real deviation from the form here provided.

(e) From the immediately succeeding clause it will be seen that the form in Schedule (O.) is not applicable to heritable securities.

(f) Vizt. by section 4, *ante*, p. 9.

(h) The part of the sixth section here referred to is now virtually repealed; see *ante*, pp. 25 and 26.

(k) That is to say, the trustee or liquidator is to be deemed and held duly infest as at the date of recording the notarial instrument, however the title may have previously stood.

SCHEDULE (O.)

Notarial Instrument (a) in favour of a Trustee in a Sequestration or of Liquidators of Joint-Stock Companies.

At _____ there was by [or on behalf of] (b) A.B., as trustee on the sequestered estate of C.D. [or as liquidator for winding up the, *specify name of company, or partner thereof for whom liquidator acts*] presented to me, notary public subscribing, a disposition [or other deed or extract, as the case may be], [insert date], recorded in the [specify register and date of recording], by which, &c. [specify the title or series of titles by which the bankrupt, or company, or partner thereof, as the case may be, held the lands], as also there was presented to me an extract act and warrant of confirmation in favour of the said A.B., dated [insert date] [or here specify the appointment of the liquidator or liquidators, and the date thereof]. Whereupon, &c., as in Schedule (J.) to the end (c).

(a) The stamp duty is 5s.

(b) The word "by" is to be used when the presentation is made by the trustee himself; and the words "on behalf of" are to be used when it is made by his agent.

(c) See *ante*, p. 56.

SCHEDULE (LL.)

Form of Instrument (a) in favour of a Trustee on a Sequestered Estate, or of Liquidators of a Joint-Stock Company in right of an Heritable Security.

At there was by [or on behalf of] (b) *A.B.* [design him, as in Schedule (O.)] presented to me, &c. [as in Schedule (HH.) down to and including description of lands and reference to real burdens, if any] (c). As also there was presented to me extract act and warrant of confirmation in favour of the said *A.B.* [or here specify the appointment of the liquidator or liquidators], dated [insert date], whereby the said *A.B.*, as trustee [or liquidator, or as the case may be], has right to the said bond and disposition in security [or as the case may be]. [If the bankrupt or company or partner is not the original creditor, here specify shortly the title or series of titles by which the bankrupt or company or partner acquired right to the debt]. Whereupon, &c. [as in Schedule (J.) to the end] (d).

(a) The stamp duty is 5s.

(b) See note (b) to the preceding schedule.

(c) That is to say, in the words of Schedule (HH.)—

"Presented to me, notary public subscribing, a bond and disposition in security [or other security, or extract, as the case may be], dated [insert date, and where recorded in the register of sasines insert date of recording, and specify register of sasines, and where sasine has been expedite thereon, add, and sasine thereon, recorded in the (specify register of sasines) on the (insert date).] granted by *C.D.* [insert designation] in favour of *E.F.* [insert designation], by which bond and disposition in security [or, as the case may be] the said *C.D.* bound and obliged himself [insert the personal obligation so far as necessary, and disposition of the lands in security, with the description of them, and also all real burdens, &c., if any, all as set forth at full length or by reference in the bond and disposition or other security]."

(d) See *ante*, p. 56.

26. *Heritable Property conveyed for Religious or Educational Purposes to vest in Donees or their Successors* (a).—Wherever lands (b) have been or may hereafter be acquired by any congregation, society, or body of men associated for religious purposes, or for the promotion of education, including the General Assemblies, Synods, and Presbyteries of the Established Church of *Scotland*, and of all other Presbyterian Churches in *Scotland*, as a chapel, meeting-house, or other place of worship, or as a manse or dwelling house for the minister of such congregation or society or body of men, or offices, garden, or glebe for his use, or as a schoolhouse or schoolmaster's house, garden, or playground, or as a college, academy, or seminary, or as a hall or rooms for meeting for the transaction of business, or as part of the property belonging to such congregation, society, or body of men, and wherever the conveyance (c) or lease of such lands has been or may be taken in favour of the moderator, minister, kirk session, vestrymen, deacons, managers, or other office bearers, or office bearer of such congregation or society or body of men, or any of them, or of trustees appointed, or to be from time to time appointed, or of any party or parties named in such conveyance (c), or lease in trust for behoof of the congregation or society or body of men, or of the individuals comprising the same, such conveyance (c), when recorded with warrant of registration thereon in terms of this Act (d), or when followed by notarial instrument expedite, and with warrant of registration thereon recorded in terms of this Act (e), or such lease, shall not only vest the party or parties named therein in the lands thereby feued, conveyed, or leased, but shall also, after the death or resignation or removal from office of such party or parties, or any of them, effectually vest their successors in office for the time being chosen and appointed in the manner provided or referred to in such conveyance (c) or lease, or if no

mode of appointment be therein set forth or prescribed, then in terms of the rules or regulations of such congregation or society or body of men, in such lands (b), subject to such and the like trusts and with and under the same powers and provisions as are contained or referred to in the conveyance or lease given and granted to the parties disponees or lessees therein, and that without any transmission or renewal of the investiture whatsoever, anything in such conveyance (c) or lease contained to the contrary notwithstanding (f): And the provisions of this section shall apply also to all trusts for the maintenance, support, or endowment of ministers of religion, missionaries, or schoolmasters, or for the maintenance of the fabric of churches, chapels, meeting houses, or other places of worship, or of manses or dwelling houses or offices for ministers of the gospel, or of schoolhouses or schoolmasters' houses, or other like buildings.

(a) This section merely re-enacts, with verbal alterations, the provisions of 13 Vict. c. 13, secs. 1 and 3, which took effect from and after 17th May 1850, as extended to trusts for the support of ministers or the maintenance of churches, schools, &c., and made applicable to feu-duties by 23 and 24 Vict. c. 143, sec. 132, which took effect from and after 1st October 1860.

The object of the section is to obviate the necessity of making up titles by the successors in office of trustees for religious or educational purposes.

Section 45 of the Conveyancing Act extends the effect of this enactment to every case where *ex officio* trustees have been appointed and have completed their title by infestment.

(b) Including, by section 3, paragraph 13, *ante*, p. 8, all heritable subjects, securities, and rights. Of course, heritable securities cannot be acquired for most of the uses here specified; but they may be acquired "as part of the property belonging to such congregation," &c., or of "trusts for the maintenance, support, or endowment of ministers," &c.

(c) Including, by section 3, paragraph 7, *ante*, p. 6, not merely conveyances properly so called, but also heritable securities, &c.

(d) Viz., under sections 12, 15, or 22; or, in the case of heritable securities, under section 120.

(e) Viz., under sections 17, 19, or 23; or, in the case of heritable securities, under section 124.

(*f*) As to the casualties payable by such parties to the superiors of the lands, see section 113 of the present Act, and section 5 of the Conveyancing Act.

27. (*a*) *Services to proceed by Petition to the Sheriff.*
 (*b*)—From and after the commencement of this Act (*c*) it shall not be competent to issue brieves from Chancery for the service of heirs, or for any person to obtain himself served heir by virtue of any such brieve, or otherwise than according to the provisions of this Act (*d*); and every person desirous of being served heir to a person deceased, whether in general or in special, and in whatsoever character (*e*), and whether the lands which belonged to such person deceased were (*f*) held by burgage tenure, or were (*f*) not held by burgage tenure, shall present a petition of service to the Sheriff (*g*) in manner hereinafter set forth (*h*).

(*a*) Here commences the part of the Consolidation Act dealing with the services of heirs, extending from this to the 58th section inclusive, and re-enacting, with considerable alterations and additions, the provisions of the Services of Heirs Act of 1847 (10 and 11 Vict. c. 47), as extended to burgage subjects by the Titles to Land Act of 1860 (23 and 24 Vict. c. 143).

(*b*) This section re-enacts, with slight alterations, the provisions of 10 and 11 Vict. c. 47, secs. 1 and 2, which took effect from and after 15th November 1847, as extended to burgage subjects by 23 and 24 Vict. c. 143, sec. 7, which took effect from and after 1st October 1860.

The object of the section is to substitute, in place of the procedure existing prior to the Act of 1847, an improved procedure by means of which a person may be judicially declared heir of an ancestor.

The Conveyancing Act has rendered service unnecessary for the transmission of a personal right to lands, but has not rendered it unnecessary for the completion of a feudal title and the acquisition of a real right in lands. Section 10 of that Act provides a special form of petition applicable to the case of a proprietor with merely a personal right having intervened between the proprietor last infeft and the petitioner.

(*c*) Viz., from and after 31st December 1868.

(*d*) The Consolidation Act generally proceeds on the principle of

superseding, but not abolishing, the old forms. See section 163. But an exception is here made in the case of services, the old law and practice being rendered incompetent. As to the now obsolete procedure by brieve of inquest from Chancery, see Bell's Lectures on Conveyancing, 1st edition, p. 1000, and Juridical Styles, 3d edition, vol. i., p. 369.

(e) Viz., as heir of line, heir of provision, or heir of tailzie and provision.

(f) Here read as inserted the words "prior to 1st October 1874," the date of the commencement of the Conveyancing Act, section 25 of which abolishes the distinction between lands held burgage and lands held feu.

(g) By the interpretation clause (section 3, paragraph 3), *ante*, p. 5, the word "Sheriff" extends to and includes "the Sheriff and Steward of any county or stewartry and his substitute, and the Sheriff of Chancery and his substitute." The respective jurisdictions of the Sheriff or Steward of a county and the Sheriff of Chancery are specified in section 28.

(h) Viz., by sections 28 and 29 of the Consolidation Act; or (in the case of a proprietor with only a personal right having intervened between the proprietor last infeft and the petitioner) by section 10 of the Conveyancing Act.

28. *Petition to be presented to the Sheriff of the County or to the Sheriff of Chancery (a).*—In every case in which a general service (b) only (c) is intended to be carried through, such petition shall be presented to the Sheriff (d) of the county within which the deceased had at the time of his death his ordinary or principal domicile, or, in the option of the petitioner, to the Sheriff of Chancery (e), and if the deceased had at the time of his death no domicile within *Scotland* (f), then in every such case to the Sheriff of Chancery; and in every case in which a special service (b) is intended to be carried through, such petition shall be presented to the Sheriff (d) within whose jurisdiction the lands or the burgh containing the lands in which the deceased person died last vest and seised are situated, or, in the option of the petitioner, to the Sheriff of Chancery (e), and in the event of the lands being situated in more counties than one, or in more burghs

than one if such burghs are in different counties, then in every such case to the Sheriff of Chancery (*g*).

(*a*) This section merely re-enacts the provisions of 10 and 11 Vict. c. 47, sec. 3, which took effect from and after 15th November 1847. Its object is to define the respective jurisdictions of the Sheriff of the county and the Sheriff of Chancery.

(*b*) As to the distinction between a general service and a special service, see sections 46, 47, 48, and 49.

(*c*) The word "only" is here used to signify that a special service is not also sought, seeing that it is competent, under section 48, in a petition for special service to pray also for general service in the same character.

(*d*) Including, by the interpretation clause (section 3, paragraph 3), *ante*, p. 5, the Sheriff and Steward of any county or stewartry, and his substitute.

(*e*) The words "Sheriff of Chancery" are declared by the interpretation clause (section 3, paragraph 3) *ante*, p. 5, to extend to and include "the Sheriff of Chancery and his substitute under this Act, or under the Act of the 10th and 11th *Victoria*, chap. 47," the office having been created by the latter Act.

(*f*) Or if the domicile is doubtful or unknown; see section 34.

(*g*) It will be observed that there is no case in which the petition may not be presented to the Sheriff of Chancery; and as there is no express provision in section 30 as to the *inducie* of a petition of special service to the Sheriff of the county, where the deceased died abroad, the safe course is to present such a petition to the Sheriff of Chancery.

29. Nature and Form of Petition (*a*).—Every petition for service shall be subscribed by the petitioner (*b*), or by a mandatory specially authorised for the purpose (*c*), and shall be in the form, or as nearly as may be (*d*) in the form, of one or other (*e*) of the Schedules (P.) and (Q.) hereunto annexed, and shall, under the exceptions after mentioned (*f*), set forth the particulars which, according to the law and practice existing prior to the 15th day of *November* 1847 (*g*), had been in use to be set forth with reference to a service sought to be carried through in any claim presented to a jury summoned under a brieve of inquest

(h), and shall pray the Sheriff (i) to serve the petitioner accordingly: Provided always, that it shall not be necessary in such petition to set forth in any case the value of the lands either according to new or old extent, or the valued rent thereof, or of whom the lands are held, or by what service or tenure they are held, or in whose hands the same have been since the death of the ancestor, or whether or how long the same have been in non-entry, or that the petitioner is of lawful age, or that the ancestor died at the faith and peace of the Sovereign (k), but that in setting forth the death of the ancestor there shall also be set forth the date at or about which the said death took place, and in cases of general service, except as hereinafter provided (l), the county or place in which the deceased at the time of his death had his ordinary or principal domicile, and that in every case in which the petitioner claims to be served heir of provision, or of taillie and provision, whether in general or special, the deed or deeds under which he so claims shall be distinctly specified (m).

(a) This section merely re-enacts, with verbal alterations, the provisions of 10 and 11 Vict. c. 47, sec. 4, which took effect from and after 15th November 1847. Its object is to provide a form for the petition substituted for the brief of inquest.

(b) With his usual signature.

(c) No particular form of mandate is prescribed by the statute. The following form may be used and adapted to the particular circumstances:—I, A.B. [*here name and design the intending petitioner, and specify his relationship to the deceased*], hereby authorise and empower Y.Z. [*here name and design the mandatory*] to procure me duly and lawfully served [*here quote from the intended prayer of the petition*]; and for that purpose as my mandatory to sign and present any petition for service that may be necessary or expedient; to obtain extracts from Chancery; and generally to do everything that may be necessary or expedient in the premises on my behalf. In witness whereof, &c.

Where the petition is to be presented under section 10 of the Conveyancing Act, this should be stated in the mandate.

The mandate should be either holograph or tested.

Under the Stamp Act of 1870 a stamp duty of 5s. is imposed on such a mandate.

Although special authority requires to be conferred on the mandatory, this may competently be done in a deed granted for

Page 93, line 4
from foot.

For "5s." read
"10s."

No stamp necessary

other purposes, such as a commission and factory, or a conveyance to the mandatory.

(d) There must be no actual deviation from the form prescribed.

(e) According as the petition is for general or for special service.

(f) Viz., in the proviso at the end of this section.

(g) Viz., the date from and after which the Service of Heirs Act (10 and 11 Vict. c. 47) came into operation.

(h) The number of these particulars depended on whether the service was general or special. In the case of a general service there was set forth (1) that the deceased ancestor died at the faith and peace of the Sovereign, (2) that the claimant was his nearest and lawful heir, and (3) that the claimant was of lawful age. The proviso at the end of this section renders it unnecessary to set forth the first and the third of these particulars.

In the case of a special service there was set forth (1) that the deceased ancestor died at the faith and peace of the Sovereign, last vest and seised in the particular lands, (2) that the claimant was his lawful and nearest heir in the said lands, (3) that the claimant was of lawful age, (4) that the lands were now worth so much yearly, and were of a specified value in time of peace, (5) that the lands were held of and under the Sovereign or other superior, as the case might be, (6) the service or tenure by which the lands were held, and (7) in whose hands the lands had been since the ancestor's death, and why and how long they had been in non-entry.

The proviso at the end of this section renders it unnecessary to set forth any of these particulars except (1) that the deceased ancestor died last vest and seised (*i.e.* last infeft) in the particular lands, and (2) that the claimant is his lawful and nearest heir in the lands.

(i) The Sheriff (or Steward) of the county or the Sheriff of Chancery, as the case may be. See section 28, *ante*, p. 91.

(k) See note (h) *supra*. As to the meaning of these particulars now dispensed with, see Bell's Lectures on Conveyancing, 1st ed., p. 1001, and Juridical Styles, 3d ed., vol. i., p. 381.

(l) Viz., by section 34, which provides that if the deceased died upwards of ten years prior to the date of presenting the petition, it shall not be necessary to state or prove the county within which the deceased had his domicile.

(m) The schedules show how the deeds are to be specified.

SCHEDULE (P.)

Form of Petition of General Service.

Unto the Honourable the Sheriff of [*specify the county, or say "of Chancery,"*] (a) the petition of *A.B.* [*here name and design the petitioner*],

Humbly showeth,

That the late *C.D.* [*here name and design the ancestor to whom service is sought*] died on or about the day of _____, and had at the time of his

death his ordinary or principal domicile in the county of _____ [*or furth of Scotland, as the case may be*].

[*In cases where the deceased died upwards of ten years before the date of the petition, and the petitioner cannot ascertain the place of the domicile* (b), say that the late *C.D.* [*here name and design the ancestor to whom service is sought*] died on or about the day of _____,

but the petitioner is unable to prove at what place the deceased had his ordinary or principal domicile at the time of his death].

That the petitioner is the eldest son [*or state what other relationship or character of heir the petitioner bears*] and nearest lawful heir in general of the said *C.D.* If the service is as heir of provision, say that the petitioner is the eldest son [*or state what other relationship or character of heir the petitioner bears*] and nearest lawful heir of provision in general of the said *C.D.*, under and by virtue of a deed [*specify the deed of provision*] executed by *E.F.*, dated the day of _____,

or otherwise describe the deed so as to clearly identify it, or, if the service is as heir of tailzie, say that the petitioner is the eldest son [*or state what other relationship, &c. the petitioner bears*], and nearest and lawful heir of tailzie and provision in general of the said *C.D.*, under and by virtue of a disposition and deed of entail granted by *E.F.*, dated the day of _____, and recorded in the regis-

ter of tailzies the day of _____, whereby the said *E.F.* conveyed the lands of *M.* to and in favour

[state the month and the year at full length] last vest and seised (b) in [here describe or refer as in Schedule (E) (c), or Schedule G. (d), to the lands with reference to which the service is sought] conform to disposition [or other deed or conveyance] dated the day of and along with warrant of registration thereon, on behalf of the said C.D., recorded in the register of sasines [specify register] on the day of [or conform to disposition, or whatever else was the deed or conveyance on which the ancestor's infestment proceeded, here specify it, dated the day of , and to instrument of sasine following thereon (e), recorded in the register of sasines [specify register] on the day of , or otherwise specify the title of deceased as recorded in the register of sasines; and when the lands are held under a deed of entail, here insert the conditions, &c. at full length, or refer to them in or as nearly as may be in the form of Schedule (C.) (f), or, if desired, refer to them as follows, but always with and under the conditions, provisions, and prohibitory, irritant, and resolute clauses [or clause authorizing registration in the register of tailzies (g), as the case may be,] contained in a deed of entail granted by G.H. [here name and design the grantor] dated the day of , in favour of I.K. [here set forth the destination, or such part thereof as may be deemed necessary, or say and the heirs therein specified], and which conditions, provisions, and prohibitory, irritant, and resolute clauses, [or clause authorizing registration in the register of tailzies (g), as the case may be,] are herein referred to, as at length set forth in the said deed of entail, which is recorded in the register of tailzies on the day of [or as at length set forth in the above-mentioned recorded disposition or other deed or conveyance in favour of the deceased, or as at length set forth in any other recorded deed or conveyance. And in every case where there are any real burdens, conditions, provisions, or limitations, proper to be inserted or referred to, insert them here, or

refer to them in or as nearly as may be in the form of Schedule (D.) (h).

That the petitioner is the eldest son [*or state what other relationship or character the petitioner bears*] and nearest lawful heir in special of the said *C.D.* in the lands and others foresaid. [*If the service is as heir of provision, say, that the petitioner is the eldest son (or state what other relationship or character the petitioner bears) and nearest lawful heir of provision in special of the said C.D. in the lands and others foresaid, under and by virtue of a deed [or other conveyance] executed by E.F. dated [here describe the deed or conveyance by date, or otherwise describe it so as clearly to identify it]. And if the service is as heir of entail, say, that the petitioner is the eldest son (or, state what other relationship or character the petitioner bears), and nearest and lawful heir of tailzie and provision in special of the said C.D. in the lands and others foresaid, under and by virtue of the said deed of entail.*

[*If it is wished to embrace a service in general in the same character as that in which special service is sought (i), say, That the petitioner is likewise heir in general, or of provision in general, or of tailzie and provision in general, or otherwise, as the case may be, of the said C.D.*]

May it therefore please your Lordship to serve the petitioner nearest and lawful heir [*or heir of provision, or heir of tailzie and provision, or otherwise as the case may be*] in special of the said deceased *C.D.* in the lands and others above described [*and where a general service is wished, add, and likewise nearest and lawful heir (or heir of provision, or heir of tailzie and provision) in general of the said C.D., or whatever else is the character of heir sought to be established, here set it forth as above*]. And where the service is as heir of tailzie and provision, say here, but always with and under the conditions, provisions, prohibitory, irritant, and resolute clauses, [*or clause authorizing registration in the register of tailzies (g),*] above

referred to [*or above written*]; and where there are real burdens, &c., say, but always with and under the real burdens, &c. above referred to [*or above written*]. And where there are several parcels of land or separate estates (*k*), here add, if desired, and to grant warrant to the Director of Chancery to issue separate extract decrees applicable to one or more of such parcels of land or separate estates.

According to Justice, &c.

[*Signed by the petitioner or his mandatory (l).*]

(a) See section 28, *ante*, p. 91.

(b) The word "last" does not refer to the date, but to the words "vest and seised," meaning that the deceased ancestor was the last person infeft in the particular lands.

(c) For Schedule (E.) substitute Schedule O. appended to the Conveyancing Act. See *ante*, p. 39, and section 61 of the Conveyancing Act.

(d) Schedule (G.) is printed *ante*, p. 45.

(e) Although all notarial instruments, including instruments of sasine, require a warrant of registration, it is not necessary in referring to them to say that they are recorded along with a warrant of registration. In the case of a disposition, the warrant of registration indicates the person on whose behalf the registration has taken place; but in the case of a notarial instrument the registration cannot have taken place on behalf of anyone but the person expeding it.

(f) Schedule (C.) is printed *ante*, p. 36. The alternative form here following is practically the same as that given in Schedule (C).

(g) Under section 14, *ante*, p. 45, an express clause authorizing registration in the register of tailzies is equivalent to the prohibitory, irritant, and resolute clauses of a deed of entail.

(h) *Ante*, p. 38; or in the form of Schedule H. appended to the Conveyancing Act.

(i) See section 48, *post*.

(k) See end of section 36, *post*.

Page 100, after
note (l).

See additional
note on the mar-
gin of page 96.

(l) See note (c) to section 29, *ante*, p. 93.

30. *Services not to proceed till publication be made*
(a).—When any petition of service shall be presented to the Sheriff of any county the service shall not proceed until publication shall be made in such county, nor until the Sheriff Clerk (b) of the county shall have received from the Sheriff Clerk of Chancery (b) official notice that publication has been made edictally in *Edinburgh*; and when such petition shall be presented to the Sheriff of Chancery, the service shall not proceed until publication shall have been made edictally in *Edinburgh*, nor until the Sheriff Clerk of Chancery (b) shall have received official notice that publication has been made in the county of the domicile of the party deceased, when such domicile was within *Scotland*, or the county or counties in which the lands are situated, as the case may be; and the edictal publication in *Edinburgh* shall be at the office of the keeper of edictal citations in the General Register Office, and in the same mode and form as in edictal citations (c); and in the county of the domicile, and in the county or counties where the lands are situated, by affixing on the doors of the Court-house, or in some conspicuous place of the Court or of the office of the Sheriff Clerk of the county, as the Sheriff may direct, a short abstract of the petition, and there shall be no farther publication; and the form of such abstract, and the mode or form of the official notice of such publications, shall be those fixed and declared by the Court of Session, by t of Sederunt, in virtue of the powers herein-after mentioned (d).

(a) This section merely re-enacts, with slight alterations, the provisions of 10 and 11 Vict. c. 47, sec. 7, which took effect from and after 15th November 1847. Its object is to give any party entitled to oppose the service an opportunity of so doing.

(b) See interpretation clause, section 3, paragraph 4, *ante*, p. 5.

(c) As to the mode and form of edictal citation, see Mackay's Practice of the Court of Session, vol. i. p. 398, and the Acts of Sederunt quoted in note (d) *infra*.

(d) Viz., by sections 51 and 162. No Act of Sederunt has been passed since the Consolidation Act was passed. Section 162, however, provides that until Acts of Sederunt shall be passed under the authority of the Consolidation Act all Acts of Sederunt in force under the authority of any of the Acts now consolidated shall remain in force. Under this provision the Act of Sederunt regulating the publication of services and the fees of Sheriff Clerks therein is that of 14th July 1847, which after being twice renewed was, with a few alterations, made permanent by the Act of Sederunt of 17th November 1849. These Acts of Sederunt are in the following terms:—

ACT OF SEDERUNT TO REGULATE PUBLICATION IN SERVICES, AND
THE FEES OF SHERIFF CLERKS THEREIN.

Edinburgh, 14th July 1847.

The Lords of Council and Session, in pursuance of the powers vested in them by the Act of Parliament passed in the 10th and 11th years of Her present Majesty's reign, chapter 47, intituled "An Act to Amend the Law and Practice in Scotland as to the "Service of Heirs," DECLARE:—

I. That the abstracts to be published in regard to general and special services, before the Sheriffs of counties and the Sheriff of Chancery, shall be in the forms, or as nearly as may be in the forms, following, according to the circumstances of the case:—

1.—*Abstract of Petition for general service, when presented to the Sheriff of a County.*

Petition for general service to the Sheriff of [*here name the county*] by A.B. [*here name and design the petitioner*] as [*here mention the relationship and character as stated in the petition*] in general to the deceased C.D. [*here name and design the deceased*], whose ordinary or principal domicile at the period of his death was in the said county.

Presented on the [*here mention the date of presenting the petition*].

2.—*Abstract of a Petition for special service, when presented to the Sheriff of a County.*

Petition for special service to the Sheriff [*here name the county*] by A.B. [*here name and design the petitioner*] as [*here mention the relationship and character as stated in the petition*] in special to the deceased C.D. [*here name and design the deceased*] in the lands of [*here mention the general designation or leading name, and if there be more parcels than one, the leading names of the lands described in the petition*].

Presented on the [*here mention the date of presenting the petition*].

3.—*Abstract of a Petition for general service, when presented to the Sheriff of Chancery.*

Petition for general service to the Sheriff of Chancery by A.B. [here name and design the petitioner] as [here mention the relationship and character as stated in the petition] in general to the deceased C.D. [here name and design the deceased], whose ordinary or principal domicile at the period of his death was in the county of [here name it, or who died domiciled furth of Scotland].

Presented on the [here mention the date of presenting the petition].

4.—*Abstract of a Petition for special service, when presented to the Sheriff of Chancery.*

Petition for special service to the Sheriff of Chancery by A.B. [here name and design the petitioner] as [here mention the relationship and character as stated in the petition] in special to the deceased C.D. [here name and design the deceased] in the lands of [here mention the general designation or leading name, and if there be more parcels than one, the leading names of the lands described in the petition] situate in the county of [here name it, or if in more counties than one, say in the counties of and].

Presented on the [here mention the date of presenting the petition].

II. That in making edictal publication of all services, an abstract, in the form above prescribed, as suitable to the case, shall be left by the Sheriff Clerk of Chancery at the office of the Keeper of the Register of Edictal Citations, and shall be entered by him in a separate book, to be kept by him for that purpose, and shall be printed and published weekly in the printed record of edictal citations, which, so far as regards the purposes of this enactment, shall be a weekly publication.

III. That the official notices of publication shall be required and given by the several Sheriff Clerks, whether of counties or of Chancery, in the following forms, or as nearly as may be in these forms:—

1.—*Requisition from the Sheriff Clerk of a county to the Sheriff Clerk of Chancery.*

[Place and date.]

Sir,—I request you to publish edictally the service, of which an abstract is subjoined, and to send me immediate notice of your having done so.—I am, &c.

[Signature and designation.]

[Here copy the abstract.]

2.—*Answer by the Sheriff Clerk of Chancery to the above.*

Edinburgh, [Date.]

Sir,—I have received your requisition of the [date], which I

return enclosed, with a certificate of publication annexed to it.—
I am, &c.

[*Signature and designation.*]

3.—*Certificate of Publication to be so annexed by the Sheriff Clerk of Chancery.*

Edinburgh, [*Date.*]

I hereby certify that the before-written abstract was edictally published by me this day.

[*Signature and designation.*]

4.—*Requisition from the Sheriff Clerk of Chancery to the Sheriff Court of a County.*

Edinburgh, [*Date.*]

Sir,—I request you to publish in your county the service of which an abstract is subjoined, and to send me immediate notice of your having done so.—I am, &c.

[*Signature and designation.*]

[*Here copy the Abstract.*]

5.—*Answer by the Sheriff-Clerk of the County to the above.*

[*Place and date.*]

Sir,—I have received your requisition of the [*date*], which I return enclosed, with a certificate of publication annexed to it.—
I am, &c.

[*Signature and designation.*]

6.—*Certificate of Publication to be so annexed by the Sheriff-Clerk of the County.*

[*Place and date.*]

I hereby certify that the before-written abstract was duly published in this county by me this day.

[*Signature and designation.*]

IV. That the requisition for publication above described shall be made by the Sheriff-Clerk, whether of a county or of Chancery, with whom the petition for service has been lodged, without delay after his receiving such petition, in a post-paid letter; and the publication shall be made, and the prescribed answer to such requisition shall be returned, likewise in a post-paid letter, without delay.

V. That when a petition of service is lodged with the Sheriff-Clerk of any county, he shall receive from the party presenting the same the fee payable to the Sheriff-Clerk of Chancery for the edictal publication thereof, and shall, once in each year, at a period and in the manner to be appointed under proper authority, make due

accounting to the Sheriff-Clerk of Chancery therefor. And when a petition of service shall be lodged with the Sheriff-Clerk of Chancery, he shall receive from the party presenting the same the fee payable to the Sheriff-Clerk of the county in which such service has to be published for such publication thereof, and shall, once in each year, at a period and in the manner to be appointed under proper authority, make due accounting to the Sheriff-Clerk of such county therefor.

VI. And to obviate doubts in regard to the form of extracts of decrees of general service, which, in terms of the 25th section of the said statute, are limited to certain lands and heritages embraced in a particular specification thereof annexed to the petition for service, it is declared that such specification shall be signed by the Sheriff-Clerk, but it shall not be necessary that the copy thereof to be embodied in such extracts shall be so signed.

VII. And, until otherwise ordered by Act of Sederunt, the following fees shall be exigible by Sheriff-Clerks for the business done under the foresaid Act of Parliament.

And the Lords appoint this Act of Sederunt to continue in force till the third sederunt-day of May next, and to be printed and published in the usual form.

D. BOYLE, *I.P.D.*

TABLE OF FEES.

FEES TO BE PAID IN THE OFFICE OF CHANCERY.

	£	s.	d.
For extracting decrees of service (including recording), each sheet of said extract, or part of a sheet, of 300 words,	0	2	0
For certified copies of proceedings in services, when re- quired by the party, each sheet, or part of a sheet, of 300 words,	0	2	0
For inspection of each book of record, having a corre- sponding index of reference,	0	2	6
For inspection of the proceedings in a service,	0	2	6
For searches in the indices in the books of record—			
(1.) For any period not exceeding one year, a fee of	0	2	6
(2.) For any period from 1 year to 10 years in- clusive, a fee of	0	5	0
(3.) For any longer period,	0	10	0
For transmitting the proceedings in a service on the warrant of the Court of Session,	0	7	6
For each attendance to exhibit a book or books of record, where the same may be lawfully required, a fee of	0	5	0

FEES TO BE PAID TO THE SHERIFF-CLERK OF CHANCERY £ s. d.
AND THE SHERIFF-CLERKS OF COUNTIES.

Fee to be received on presenting the petition, whether of general or special service, whereof one-half to be retained by the Sheriff-Clerk receiving it, and the other half accounted for by him to the Sheriff-Clerk who assists in the publication of the petition, and to cover correspondence, framing of abstracts, publication, and postages,	0	10	0
---	---	----	---

In General Services.

For attending at service, and framing and recording minutes,	0	3	6
In litigated cases, the clerk or assistant-clerk to be paid for writing the proof, at the rate, per sheet of 300 words, of	0	0	6
For general trouble connected with the service,	0	10	0
For writing decree of service,	0	2	6

In Special Services.

For framing and recording minutes, (including attendance at the service)—			
For the first sheet, of 300 words,	0	3	6
Every following sheet,	0	2	0
For general trouble connected with the service,	0	15	0
For writing decree of service,	0	5	0
In litigated cases, the clerk or assistant-clerk to be paid for writing the proof, at the rate, per sheet of 300 words, of	0	0	6

NOTE.—In all cases the additional procedure occurring when the service is opposed, to be paid for by the parties according to the rates chargeable by the respective Sheriff-Clerks in ordinary business; and in the case of the Sheriff-Clerk of Chancery, according to the rate chargeable by the Sheriff-Clerk of Edinburgh, as regulated by the Act 1st and 2d Vict. cap. 119.

Caveats.

For each caveat (to be effectual for one year), the Sheriff-Clerk to receive for his own use, in all cases,	0	2	6
---	---	---	---

ACT OF SEDERUNT FOR MAKING PERMANENT A PREVIOUS ACT
OF SEDERUNT IN REGARD TO PUBLICATION IN SERVICES, &c.

Edinburgh, 17th November 1849.

The Lords of Council and Session again renew the Act of Sederunt, dated on the 14th of July 1847, regulating the Publication in services, with the relative Table of Fees, and declare the same permanent, with the following variation and addition, viz. :—

1st, That for extracting decrees of service (including recording) there shall be paid for each sheet of such extract, or part of a sheet of 300 words, 3s. 6d. in place of 2s. as heretofore; and 2d, That there shall be paid a fee of 2s. for each service carried through before the said Sheriff to such macer or macers of the Court of Exchequer when the Sheriff sits in that Court, or to such macer or macers of the Court of Session, when the Sheriff sits in that Court, as shall be appointed in either case by the Sheriff to officiate as macer or macers in the service.

And the Lords appoint this Act to be inserted in the books of sederunt, and to be published in common form.

D. BOYLE, *I.P.D.*

31. Caveats to be received (a).—The Sheriff Clerk (b) shall be bound to receive any caveat (c) against any petition of service to be presented to him, and on receipt of the petition of service referred to in the caveat, or of any official notice of any such petition which may be communicated to such Sheriff Clerk, such Sheriff Clerk shall within twenty-four hours thereafter write and put into the post-office a notice of such petition, addressed either to the agent by whom or to the person on whose behalf the caveat is entered, as may be desired in such caveat, and according to the name and address which shall be stated in such caveat, the Sheriff Clerk receiving therefor a fee for his own use of such amount as shall be fixed by an Act of Sederunt as aforesaid (d).

(a) This section merely re-enacts, with verbal alterations, the provisions of 10 and 11 Vict. c. 47, sec. 8, which took effect from and after 15th November 1847.

Its object is to provide a mode by which intimation may be secured to any person who intends to object to an anticipated service.

(b) Extending to and including the Sheriff Clerk of Chancery, and the Sheriff Clerk or Stewart Clerk of any county or stewartry and their respective deputies. See interpretation clause (section 3, paragraph 4), *ante*, p. 5.

(c) No particular form is required.

(d) The fee is 2s. 6d. See *ante*, p. 105.

32. *Petition of Service to be equivalent to a Brieve and Claim* (a).—A petition of service so presented (b) shall, after expiration of the period herein-after mentioned (c), be equivalent to and have the full legal effect of a brieve of service duly executed, and of a claim duly presented to the inquest (d), according to the law and practice existing prior to the 15th day of November 1847 (e); and every petition of service, without further publication than is herein provided (f), and has been or may be directed by Act of Sederunt (g), shall be held as duly published to all parties interested, and the decree to follow upon such petition shall not be questionable or reducible upon the ground of omission or inaccuracy in the observance by any officer or official person of any of the forms or proceedings herein prescribed, or which have been or shall be prescribed by an Act of Sederunt made in relation to petitions of service.

(a) This section merely re-enacts, with verbal alterations, the provisions of 10 and 11 Vict. c. 47, sec. 9, which took effect from and after 15th November 1847.

Its object is to make the new forms of petition authorised by the statute equivalent to the forms now abolished.

(b) Viz., under sections 28, 29, and 30.

(c) Viz., in section 33.

(d) As to these old forms, see Juridical Styles, 3d ed., vol. i., p. 374 *et seq.*

(e) That is to say, the date from and after which the Services of Heirs Act (10 and 11 Vict. c. 47) took effect.

(f) Viz., by section 30.

(g) The only Acts of Sederunt are those quoted *ante*, p. 101 *et seq.*

33. *Procedure before the Sheriff, and the effect of his judgment* (a).—In regard to all petitions of service presented to the Sheriff of Chancery (b) or to the Sheriff (b) of a county respectively, where the deceased died in *Scotland*, no evidence shall be led and no decree pronounced thereon by such Sheriff until after the

lapse of fifteen days from the date of the latest publication, or where publication is to be made in *Orkney* or *Shetland*, or the petition is presented to the Sheriff of *Orkney* or *Shetland*, until after the lapse of twenty days from such date; and in regard to all petitions of service to be presented to the Sheriff of Chancery (*b*) where the deceased died abroad, no evidence shall be taken and no decree pronounced thereon by him until after the lapse of thirty days from such date (*c*); and it shall be lawful, after the lapse of the times respectively above mentioned, to the Sheriff (*b*) to whom such petition of service shall have been presented, by himself, or by the provost or any of the bailies of any city or royal or parliamentary burgh, or by any justice of the peace for any part of the United Kingdom wherever such justice of the peace may happen to be for the time, whether within the United Kingdom or abroad, or by any notary public (*d*), all of whom are hereby authorized to act as commissioners of such Sheriff without special appointment, or by any commissioner whom such Sheriff may appoint, to receive all competent evidence, documentary and parole, and any parole evidence so received shall be taken down in writing, according to the practice in the Sheriff Courts of *Scotland* existing prior to the 1st day of *November* 1853 (*e*), and a full and complete inventory of the documents produced shall be made out, and shall be certified by the Sheriff or his commissioner aforesaid; and on considering the said evidence the Sheriff shall, without the aid of a jury, pronounce decree, serving the petitioner in terms of the petition, in whole or in part, or refusing to serve the said petitioner and dismissing the petition, in whole or in part, as shall be just (*f*); and the said decree shall be equivalent to and have the full legal effect of the verdict of the jury under the brieve of inquest (*g*), according to the law and practice existing prior to the said 15th day of *November* 1847 (*h*).

(*a*) This section merely re-enacts, with verbal alterations and one addition (specified in note (*d*) *infra*), the provisions of 10 and

11 Vict. c. 47, sec. 10, which took effect from and after 15th November 1847.

Its object is to regulate the procedure and mode of proof under the petitions for service authorised by the Act.

Section 52 of the Conveyancing Act declares that it shall not be competent to challenge any decree of service dated before 1st October 1874, *inter alia*, on the ground that evidence was led and the decree pronounced before the expiry of the *induciæ*.

(b) See interpretation clause (section 3, paragraph 3), *ante*, p. 5.

(c) Section 52 of the Conveyancing Act secures decrees pronounced before 1st October 1874 from challenge, on the ground that they were pronounced before the lapse of the time here mentioned.

(d) As regards justices of the peace and notaries public, this is a new enactment, thus taking effect from and after 31st Dec. 1868.

The words "notary public" mean a "notary public duly admitted to practice in Scotland." See interpretation clause (section 3, paragraph 14) *ante*, p. 8.

(e) That is to say, the date from and after which the Sheriff Court Act of 1853 (16 and 17 Vict. c. 80) took effect. Section 10 of that Act substituted for the extended record of the evidence, taken by the Sheriff or his commissioner, a note of evidence taken by the Sheriff in his own hand, setting forth the witnesses examined and the testimony given by each, not by question and answer, but in the form of a narrative. The present enactment falls back upon the previous practice, both because the evidence may be taken by a commissioner, and because it is expedient to have a full record of the evidence in case an action of reduction of the service should be subsequently raised. The evidence is accordingly taken at full length, as nearly as possible in the witnesses' own words, by the clerk of the Sheriff or of the commissioner. The deposition of each witness begins thus—"Compeared A.B. (*design him*) aged years, who being solemnly sworn and interrogated, depones," &c., and ends thus—"All which is truth, as the deponent shall answer to God." The witness, Sheriff (or commissioner), and clerk sign at the foot of each page, and at the end of the deposition of each witness, the commissioner and clerk adding to their signatures the words commissioner and clerk respectively. Marginal additions, deletions, or interlineations must be authenticated in the usual way. See Shand's Practice of the Court of Session, p. 354.

By "The Evidence Further Amendment (Scotland) Act, 1874" (37 and 38 Vict. c. 64), sections 4 and 5, in every case of a proof in a civil cause or proceeding in a Sheriff Court, the Sheriff (including Sheriff-Substitute, and any person appointed by a Sheriff to take evidence on commission) may, on the motion of any party to the cause or proceeding, cause the evidence to be taken down and recorded in short-hand. This enactment is obviously not applic-

able to the evidence taken by the Sheriff of Chancery or any of the persons authorised by this section of the Consolidation Act to act as commissioners without special appointment. Whether it can be regarded as applicable to evidence under a petition for service when taken by an ordinary Sheriff or a commissioner specially appointed by him, is very doubtful, and the usual practice ought therefore to be adhered to.

(*f*) Section 57 of the Conveyancing Act renders it unnecessary for the Sheriff of Chancery or for the Sheriff of any county to hold a court for the consideration or disposal of any unopposed petition for service.

As to the mode by which the Sheriff's judgment may be brought under the review of the Court of Session, see section 42.

(*g*) See Juridical Styles, 3d edition, vol. i., p. 416.

(*h*) Viz., the date from and after which the Services of Heirs Act (10 and 11 Vict. c. 47) took effect.

34. *Case where Domicile of Party is unknown* (*a*). —Where a general service only (*b*) is intended to be carried through by an heir, it shall not be necessary, if the deceased died upwards of ten years prior to the date of presenting the petition for general service as heir to him, to state or prove the county within which the deceased had his ordinary or principal domicile at the time of his death, or that such domicile was furth of *Scotland*; but in such cases it shall be sufficient (so far as regards the domicile of the deceased) for the heir to state in his petition (*c*), and if required in the court of service to make oath, that he is unable to prove at what place the deceased had his ordinary or principal domicile at the time of his death: Provided always, that in every such case and in every case of general service where it is doubtful in what county the deceased had his ordinary or principal domicile, the petition for general service as heir to the deceased shall be dealt with, and all relative procedure shall be regulated, in or as nearly as may be in the same manner as if it had been proved that the deceased had at the time of his death his ordinary or principal domicile furth of *Scotland* (*d*).

(a) This section merely re-enacts, with the substitution of ten years for forty years, the provisions of 10 and 11 Vict. c. 47, sec. 30, which took effect from and after 15th November 1847.

Its object is to dispense with the necessity of setting forth and proving the county or place in which an ancestor long since dead had his domicile. See section 29.

(b) "A general service only" means a general service not combined, as it may be under section 48, with a special service.

(c) In the manner shown in Schedule (P.), *ante*, p. 95.

(d) The petition must in this case be presented to the Sheriff of Chancery; section 28, *ante*, p. 91.

35. *Competing Petition may be presented, and Sheriff, after receiving evidence, give judgment (a).—* It shall be lawful to any person who may conceive that he has a right to be served preferable (b) to that of the person petitioning the Sheriff (c) as aforesaid, also to present a petition of service to the Sheriff in manner and to the effect aforesaid (d), and the same shall be proceeded with in manner herein-before directed (e); and it shall be lawful to the Sheriff (c), if he shall see cause, at any time before pronouncing decree in the first petition (f), to sist procedure on the first petition in the meantime, or to conjoin the said petitions, and thereafter to proceed to receive evidence in manner herein-before (g) directed, allowing each of the parties not only a proof in chief with reference to his own claim, but a conjunct probation with reference to the claims of such other parties; and the Sheriff (c) shall, after receiving the evidence, pronounce decree on the said petitions, serving or refusing to serve as may be just, and shall at the same time dispose of the matter of expenses; and when the accounts thereof shall be audited and taxed in manner after provided (h), such Sheriff (c) shall decern for the same.

(a) This section merely re-enacts, with slight additions, the provisions of 10 and 11 Vict. c. 47, sec. 11, which took effect from and after 15th November 1847.

Its object is to regulate the procedure in the event of a petition for service being opposed.

(b) See section 40 as to the parties entitled to oppose a service.

(c) Viz., the Sheriff of the county or the Sheriff of Chancery. See section 28, *ante*, p. 91.

(d) Viz., in sections 27 to 34 inclusive.

(e) Viz., in section 33, *ante*, p. 107.

(f) Even after taking evidence.

(g) Viz., in section 33, *ante*, p. 107.

(h) Viz., in section 51; that is to say, accounts in the Sheriff Court of Chancery are taxed by the auditor of the Court of Session, and accounts in the Sheriff Court of a county are taxed by the auditor of such Court.

36. *Recording and Extract of Judgment* (a).—On the application of the petitioner in whose favour a decree shall have been pronounced by the Sheriff (b), the Sheriff Clerk (c) shall forthwith transmit to the office of the Director of Chancery the petition on which such decree was pronounced, together with such decree, the proof taken down in writing as aforesaid (d), and the inventories of written documents made up and certified as aforesaid (d), and also all other parts or steps of the process, excepting any original documents or extracts of recorded writs produced therewith, which after decree is pronounced shall be returned, on demand, to the parties producing the same; and on the proceedings being so transmitted to Chancery such decree shall be recorded by the Director of Chancery, or his depute, in the manner and form directed or approved of or to be directed or approved of from time to time by the Lord Clerk Register (e); and on such decree being so recorded, the Director of Chancery, or his depute, shall prepare an authenticated extract thereof, and, where such decree shall have been pronounced by the Sheriff of Chancery, shall deliver such extract to the party or his agent, and in all other cases shall transmit such extract without delay, and without

charge or expense against the party in respect of the transmission and retransmission, to the Sheriff Clerk of the county to be by him delivered to the party or his agent in the Sheriff Court; and such proceedings and decree shall, both prior and subsequent to the said transmission, be at all times patent and open to inspection in the office of the Sheriff Clerk, and of the Director of Chancery respectively; and certified copies shall be given to any party demanding the same, on payment of such fees as shall be fixed by Act of Sederunt as aforesaid (*f*); and in cases where an heir is served to an ancestor in several separate lands or estates under the same petition, it shall be competent for such heir to obtain separate extract decrees under the said petition applicable to one or more of such parcels of lands or separate estates, provided a prayer to that effect is inserted in the petition for service (*g*).

(*a*) This section merely re-enacts, with verbal alterations and the addition of the last clause, the provisions of 10 and 11 Vict. c. 47, sec. 7, which took effect from and after 15th November 1847. Its object is to regulate the mode of extracting the Sheriff's decree.

(*b*) See interpretation clause (section 3, paragraph 3), *ante*, p. 5.

(*c*) See interpretation clause (section 3, paragraph 4), *ante*, p. 5.

(*d*) Viz., in section 33.

(*e*) Section 52 of the Conveyancing Act declares that it shall not be competent to challenge decrees of service dated before 1st October 1874, *inter alia*, on account of any objection to the manner or form in which they have been recorded or extracted, or on the ground that the manner and form of recording or extracting in use for the time had not been directed or approved of by the Lord Clerk Register.

(*f*) Viz., in section 30.

(*g*) See form of petition given in Schedule (Q.), *ante*, p. 96.

37. *The Extract Decree to be equivalent to an Extract Retour (a).*—The decree of service so (b) recorded and extracted shall have the full legal effect of a service duly retoured to Chancery, and shall be equivalent to the retour of a service under the brieve of inquest (c) according to the law and practice existing prior to the 15th day of *November 1847 (d)*; and the extract of such decree, or any second or later extract thereof, under the hand of the proper officer entitled to make such extracts for the time, shall be equivalent to and have the full legal effect of the certified extract of the retour (c) formerly in use according to the law and practice existing prior to the said 15th day of *November 1847 (d)*; and the decree of service so (b) recorded and extracted shall not be liable to challenge, nor be set aside, except by a process of reduction to be brought before the Court of Session as heretofore in use with regard to services duly retoured to Chancery (e).

(a) This section merely re-enacts, with verbal alterations, the provisions of 10 and 11 Vict. c. 47, sec. 13, which took effect from and after the 15th November 1847. Its object is to make the new form of decree of service equivalent to the forms now superseded.

(b) Viz., under section 36.

(c) As to these old forms, see *Juridical Styles*, 3d ed., vol. i., p. 417, and *Bell's Lectures on Conveyancing*, 1st ed., p. 1002. The difference between the old and new forms is chiefly this, that formerly the facts were established before a jury selected by the claimant: they are now proved in a process before the Sheriff of Chancery or the Sheriff of a county.

(d) Viz., the date from and after which the Service of Heirs Act (10 and 11 Vict. c. 47) took effect.

(e) As to reduction, see section 43.

38. *Transmission of Records (a).*—The book or books in Chancery in which such decree shall be recorded as aforesaid (b) shall be entitled the "Record

of Services," and shall be the book or books presently in use as the "Record of Services" under the said recited Act 10th and 11th of the reign of Her present Majesty, chapter 47 (c), and such other book or books as shall be from time to time issued under the direction and authority of the Lord Clerk Register, for which no more than the prime cost shall be charged; and it shall not be lawful for the Director of Chancery to use any other book or books in framing the said records; and the said book or books shall have an index or abridgment connected therewith, to be prepared in Chancery in the form and manner at present in use, or in any other form and manner to be pointed out or approved of by the Lord Clerk Register; and such index or abridgment shall be completed as soon as possible after the end of each year, and shall be printed and published, and printed copies thereof shall be distributed and disposed of in the manner at present in use, or in such other manner as shall be directed or approved of by the Lord Clerk Register: Provided always, that if a more general distribution or publication of such index or abridgment than to the official individuals to be fixed by the Lord Clerk Register shall be made, then and in that case copies of the index or abridgment aforesaid shall be sold to the public at the lowest rate which will defray the expense of printing the same, and an account of the sums to be received shall be exhibited by the Director of Chancery, and be examined and audited along with his other accounts; and such index or abridgment shall be so prepared, printed, and distributed at latest by the 1st day of *July* in each year, beginning with the year 1869; and the said record of services and other proceedings shall be at all times patent and open to inspection in the office of Chancery, on payment of such a fee as shall be regulated by Act of Sederunt as aforesaid (d), and extracts from the said record, or certified copies of the said proceedings, shall be given to any one demanding the same, on payment of such fees as shall be fixed by Act of Sederunt as afore-

said (d) ; and the Director of Chancery shall have the power and is hereby required to direct and regulate the Sheriff Clerks in the several counties and the Sheriff Clerk of Chancery in regard to the manner of arranging and transmitting the petitions of service and procedure thereon, and also to prepare and furnish to the Sheriff Clerks of the several counties the requisite printed forms of the intimations to be sent by them through the post-office to the Sheriff Clerk of Chancery when petitions of service shall be presented in their respective Courts, or when they shall have received notice to publish petitions that have been presented to the Sheriff of Chancery.

(a) This section merely re-enacts, with verbal alterations, the provisions of 10 and 11 Vict. c. 47, sec. 10, which took effect from and after 15th November 1847.

Its object is to provide a record of services, an index or abridgment of which is to be printed and published annually.

Section 58 of the Conveyancing Act provides for the transmission of this index or abridgment to every Sheriff Clerk, in whose office it may be inspected by the public.

(b) Viz., under section 36.

(c) Viz., the Services of Heirs Act of 1847 repealed and consolidated by the present Act ; see section 4, *ante*, p. 9.

(d) The Acts of Sederunt now in force are printed *ante*, p. 101 *et seq.*

39. *Clerks of Chancery to be remunerated for keeping Register, &c., by Act of Sederunt (a).*—The amount of remuneration to the clerks of Chancery for keeping the record of services, and arranging the warrants, and preparing the indexes and abridgments (b), shall be fixed by Act of Sederunt as aforesaid (c); and such remuneration, together with the expense of printing the index or abridgment aforesaid, shall be paid from the fees collected in the office of Chancery, and an account thereof shall be exhibited by the Director of Chancery, and be examined and audited along with his other accounts.

(a) This section merely re-enacts 10 and 11 Vict. c. 47, sec. 15, which took effect from and after 15th November 1847.

Its object is to regulate the remuneration of the clerks of Chancery.

(b) Under section 38, *ante*, p. 114.

(c) The Acts of Sederunt now in force are printed *ante*, p. 101 *et seq.*

40. *No person entitled to oppose a service who could not appear against a brieve of inquest (a).—*No person shall be entitled to appear and oppose (b) a service proceeding before the Sheriff (e) in terms of this Act who could not competently (c) appear and oppose such service if the same were proceeding under the brieve of inquest according to the law and practice existing prior to the 15th day of *November* 1847 (d); and all objections shall be presented in writing, and shall forthwith be disposed of in a summary manner by the Sheriff (e), but without prejudice to the Sheriff (e), if he see cause, allowing parties to be heard *viva voce* thereon (f).

(a) This section merely re-enacts, with verbal alterations, 10 and 11 Vict. c. 47, sec. 16, which took effect from and after 15th November 1847.

Its object is to prevent opposition being offered by persons who under the old law were not entitled to oppose a service.

(b) Under section 35, *ante*, p. 111.

(c) Under the old law and practice, no one could competently appear and oppose a service unless he himself took out a brieve of inquest; and accordingly no person can now appear and oppose a service unless he himself has presented a petition for service.

(d) Viz., the date from and after which the Services of Heirs Act above mentioned took effect.

(e) See interpretation clause (section 3, paragraph 3), *ante*, p. 5.

(f) As to agents entitled to practise, see section 53.

41. *Appeal for Jury Trial (a).—*In all cases in which competing petitions presented to the Sheriff (b)

in terms of the last-recited Act (c) or of this Act have been or shall be conjoined as aforesaid (d), or in which any person has competently appeared or shall competently (e) appear to oppose any petition of service presented to the Sheriff in terms of the said-recited Act (c) or of this Act, it shall be competent to any of the parties, at any time before proof is begun to be taken by the Sheriff (b) in manner before (f) provided, to remove the proceedings to the Court of Session, by a note of appeal in or as nearly as may be in the form of a note of appeal under the "Court of Session Act, 1868" (g), which note of appeal shall be proceeded with in like manner with notes of appeal presented with a view to jury trial against judgments of the Sheriff Courts of Scotland (h), and such judgment shall be pronounced on the said note of appeal as shall be just (i); and in the event of it appearing proper that the cause should be tried by a jury (k), the same shall be tried according to the law and practice in trials by jury of causes in the Court of Session, and the jury shall be chosen and summoned in like manner as on such trials; and the verdict to be returned by the jury shall be equally final and conclusive with the verdicts returned in trials by jury in the said Court, but with all and the like remedies by bill of exceptions, motion for new trial, or otherwise, competent in regard to such verdicts (l): Provided always, that in every case in which the jury shall find a verdict, or in which the Court shall pronounce a judgment in favour of a party petitioning to be served, the Court shall, at the same time with applying such verdict, or pronouncing such judgment, remit to the Sheriff (b) from whom the cause was appealed, or before whom such petitions or petition would have depended if the same had not been advocated or appealed before the commencement of this Act, with instructions to pronounce a decree serving the said party in terms of this Act, which decree may thereafter be extracted, and the extract thereof recorded and given out in manner and to the effect before provided (m).

(a) This section merely re-enacts, with slight alterations and additions, the provisions of 10 and 11 Vict. c. 47, sec. 17, which took effect from and after 15th November 1847.

Its object is to provide, in the case of competing petitions for service, a mode of trial by jury or by the Court of Session.

(b) Viz., either the Sheriff of Chancery or the Sheriff or Steward of a county, and their substitutes. See interpretation clause (section 3, paragraph 3), *ante*, p. 5.

(c) Viz., 10 and 11 Vict. c. 47, repealed and consolidated by the present Act.

(d) Viz., under section 35, *ante*, p. 111.

(e) As to parties who may competently oppose, see section 40, *ante*, p. 117.

(f) Viz., by section 33, *ante*, p. 107.

(g) 31 and 32 Vict. c. 100, sec. 66.

(h) 31 and 32 Vict. c. 100, sec. 73.

(i) The case may be decided without proof where proof is unnecessary.

(k) Where the case is not suited for trial by jury, the Division of the Court to which the appeal is presented may order a proof before one of themselves—*More*, 9th July 1870, 7 Scot. Law Rep. 623; see also *Campbell v. Campbell*, 26th June 1866, 4 Macph. 867. But where only questions of fact are involved, even although there may be a great quantity of documentary evidence, the case will be sent to trial by jury—*Mackintosh v. Ross*, 30th May 1873, 11 Macph. 636, and 7th December 1875, 3 Rettie 232.

(l) 31 and 32 Vict. c. 100, sec. 34 *et seq.*

(m) Viz., by section 36, *ante*, p. 112.

42. *Where Sheriff refuses to serve Petitioner, &c., judgment may be reviewed (a).*—In every case in which the Sheriff (*b*), acting under the said Act of the 10th and 11th of Her Majesty Queen Victoria, chapter 47 (*c*), or under this Act, has pronounced or shall pronounce a decree refusing to serve a petitioner, or dismissing his petition, or repelling the objection of an opposing party, it shall be lawful to bring the said

decree under review of the Court of Session by a note of appeal, in or as nearly as may be in the form of a note of appeal under the "Court of Session Act, 1868" (*d*): Provided always, that such note shall be presented within fifteen, or, where the proceedings have been taken in the Courts of *Orkney* or *Shetland*, twenty days from the date of the said judgment; and that where the decree has been pronounced after opposition duly entered or in competition, such note shall be intimated to the opposite party, and such note shall be proceeded with in like manner with notes of appeal against final judgments of the Sheriff Courts (*e*); and it shall be competent to the Court of Session, if it shall appear necessary for the right determination of the cause, to allow further or additional evidence to be taken in any way or form in which evidence may be competently taken in ordinary civil causes depending before the said Court (*f*), or to appoint the cause, or special issues therein, to be tried by a jury, and such jury trial shall proceed in the same manner and to the like effect, and with all and the like remedies as are before provided (*g*), and such judgment shall be pronounced on such note of appeal as shall be just: Provided always, that in every case in which the Sheriff has refused to serve, but in which the Court of Session shall determine that the party ought to be served, a remit shall be made to the Sheriff from whom such petition has been or shall be appealed, or before whom the same, if not advocated or appealed before the commencement of this Act, would have depended, with instructions to pronounce a decree serving the said party in terms of this Act, which decree may be thereafter recorded and extracted in manner and to the effect before provided (*h*): Provided also, that nothing herein contained shall prejudice the right of any person whose petition of service shall be refused without any opposing or competing party having appeared and been heard on the merits of the competition, to present a new petition at any time thereafter, or the right of either party in any of the proceedings authorized in

the Court of the Sheriff, by this Act or the said Act of the 10th and 11th of Her Majesty, chapter 47 (*c*), to bring under challenge whatever decree may have been or may be pronounced therein by process of reduction before the Court of Session on any competent ground (*i*).

(*a*) This section merely re-enacts, with some alterations required by the modern procedure of the Court of Session, the provisions of 10 and 11 Vict. c. 47, sec. 18, which took effect from and after 15th November 1847.

Its object is to regulate the mode by which the judgment of the Sheriff may be brought under the review of the Court of Session.

(*b*) Viz., either the Sheriff of Chancery or the Sheriff or Steward of a county or their substitutes. See interpretation clause (section 3, paragraph 3), *ante*, p. 5.

(*c*) Viz., the Services of Heirs Act of 1847, repealed and consolidated by the present Act; see section 4, *ante*, p. 9.

(*d*) 31 and 32 Vict. c. 100, sec. 66.

(*e*) 31 and 32 Vict. c. 100, sec. 66 *et seq.*

(*f*) 31 and 32 Vict. c. 100, sec. 72.

(*g*) Viz., in section 41, *ante*, p. 117 *et seq.*

(*h*) Viz., by section 36, *ante*, p. 112.

(*i*) As to actions of reduction, see section 43, following.

43. *Procedure when a Decree of Service is brought under Reduction.—Effect of the Decree of Reduction* (*a*).—In every case in which a process of reduction of any decree of service pronounced by any Sheriff (*b*) acting under the said last-recited Act (*c*) or this Act has been or shall be brought before the Court of Session, it shall be competent to the said Court, if it shall appear necessary for the right determination of the cause, either to allow further or additional evidence to be taken in any way or form in which evidence may be competently taken in ordinary civil causes depending before the said Court (*d*), or to appoint the cause, or special issues therein, to be tried by a jury; and

such jury trial shall proceed in the same manner, and to the like effect, and with all and the like remedies as are before provided (*c*) in regard to jury trials under notes of appeal, and such judgment shall be pronounced in the said process as shall be just: Provided always, that wherever the decree of the Sheriff (*b*) brought under reduction has proceeded on competing petitions conjoined as aforesaid (*f*), and the Court of Session shall determine that a different person shall be served from the person preferred by the Sheriff (*b*), a remit shall be made to the Sheriff (*b*) acting under this Act before whom the said competing petitions depended, or to the Sheriff (*b*) before whom the same would have depended if the said decree had not been pronounced before the commencement of this Act, with instructions to pronounce a decree serving such different person in terms of this Act, which decree may be thereafter recorded, and an extract thereof given out in manner and to the effect above provided (*g*); and in any case of reduction of a service the judgment shall unless and until reversed by the House of Lords on appeal be conclusive, as between the parties to the suit, against the party whose service is reduced, and shall have the same effect as if the action had contained a conclusion of declarator that the party served was not entitled to be served in the character claimed, and judgment had been pronounced in terms of that conclusion.

(*a*) This section merely re-enacts, with verbal alterations, the provisions of 10 and 11 Vict. c. 47, sec. 19, which took effect from and after 15th November 1847.

Its object is to regulate the procedure when a decree of service is sought to be reduced.

(*b*) Viz., either the Sheriff of Chancery or the Sheriff or Steward of a county, and their substitutes. See interpretation clause (section 3, paragraph 3), *ante*, p. 5.

(*c*) Viz., the Services of Heirs Act of 1847, repealed and consolidated by the present Act; see section 4, *ante*, p. 9.

(*d*) 31 and 32 Vict. c. 100, sec. 72.

(e) Viz., by section 41, *ante*, p. 117 *et seq.*

(f) Viz., in section 35, *ante*, p. 111.

(g) Viz., by section 36, *ante*, p. 112.

44. *Forms and effect of procedure in the Court of Session (a).*—All proceedings authorized by the present Act to be taken in the Court of Session in reference to appeals from the Sheriff or to reduction of decrees of service shall commence and be carried on in the same manner with proceedings of the same description in ordinary civil causes; and all judgments to be pronounced by the Court of Session in such proceedings in terms of this Act, or in the corresponding proceedings in terms of the said last-recited Act (*b*), shall be equally final and conclusive as the judgments pronounced by the said Court in ordinary civil causes, and shall not be liable to review by reduction or otherwise, save and except to such extent and effect as judgments by the said Court in ordinary civil causes are so liable: Provided always, that it shall be competent to appeal against the said judgments to the House of Lords in like manner as against judgments of the Court in ordinary civil causes aforesaid.

(*a*) This section merely re-enacts, with alterations adapted to the modern practice of the Court of Session, the provisions of 10 and 11 Vict. c. 47, sec. 20, which took effect from and after 15th November 1847.

Its object is to assimilate the procedure in the Court of Session as regards decrees of service to the procedure in ordinary civil causes.

(*b*) Viz., the Services of Heirs Act of 1847, repealed and consolidated by the present Act; see section 4, *ante*, p. 9.

45. “*Court of Session Act, 1868,*” to apply to *Appeals and Reductions, &c. under this Act (a).*—The whole provisions of “*The Court of Session Act, 1868*” (*b*), shall, in so far as possible, apply to notes of appeal (*c*) and processes of reduction (*d*) under this Act, and

to all advocations (*e*) from the Sheriff (*f*) and to all processes of reduction of decrees of service in dependence in the Court of Session at the commencement of this Act, and to all advocations which may after the commencement of this Act come before the Inner House of the Court of Session by report or reclaiming note from any Lord Ordinary; provided always, that the advocations depending before the Outer House of said Court at the commencement of this Act shall be disposed of in the Outer House according to the law and practice existing prior to the commencement of the said "Court of Session Act, 1868."

(*a*) This is a new enactment, thus taking effect from and after 31st December 1868. Its object is to make the procedure of the Court of Session Act of 1868 applicable to proceedings with regard to decrees of service.

(*b*) 31 and 32 Vict. c. 100.

(*c*) Viz., under sections 41 and 42, *ante*, p. 117 *et seq.*

(*d*) Viz., under section 43, *ante*, p. 121.

(*e*) The process of advocation is abolished by 31 and 32 Vict. c. 100, sec. 64.

(*f*) Viz., either the Sheriff of Chancery or the Sheriff or Steward of a county, or their substitutes. See interpretation clause (section 3, paragraph 3), *ante*, p. 5.

(*g*) See, however, section 161, as to the finality of a decree in a duly intimated advocation or appeal from the Sheriff in cases where the respondent has not appeared.

46. *A Decree of Special Service, besides operating as a Retour, shall have the operation and effect of a Disposition from the deceased to his* (*a*) *Heirs and Assignees* (*b*).—On being recorded and extracted as aforesaid (*c*), every decree of special service pronounced in virtue of the said recited Act 10th and 11th of the reign of Her present Majesty, chapter 47 (*d*), in favour

of any person who shall be in life at the passing of this Act (*e*), and every decree of special service to be pronounced in virtue of this Act, shall, to all intents and purposes, unless and until reduced (*f*), be held equivalent to and have the full legal operation and effect of a disposition in ordinary form of the lands contained in such service, granted by the person deceased, being last feudally vest and seised in the said lands, to and in favour of the heir so served, and to his other heirs and successors entitled to succeed under the destination of the lands contained in the deceased's investiture thereof, but under the whole conditions and qualifications of such investiture as set forth or referred to in such extracted decree, containing (*g*) the various clauses set forth in No. 1. of Schedule (B.) hereto annexed (*h*) in the case of lands not held by burgage tenure, and in No. 2. of Schedule (B.) hereto annexed in the case of lands held by burgage tenure (*i*), although the deceased should have died in nonage, or been of insane mind, or laboured under any disability whatever, and as if a disposition had been granted in these terms by the deceased when of full age and capacity to grant it (*j*); and in the case of lands not held by burgage tenure, such extracted decree shall infer that the same are to be holden in the manner and subject to the provisions enacted and provided in the sixth section of this Act in the case of conveyances in which no manner of holding is expressed (*k*); and in the case of lands held by burgage tenure such extracted decree shall infer that the same are to be holden of Her Majesty in free burgage (*l*); and in either case such extracted decree shall be held from the date of such recording to vest in the heir so served a personal right to the lands therein contained, and to render said lands liable to all his debts and deeds, and to the diligence of his creditors, as well after his death as during his life, which right shall be transmissible to the heirs and successors of the heir so served entitled to succeed to the said lands under the destination thereof as aforesaid, and also to his assignees, legal as well as voluntary, except in so far as such transmission shall be effectually prohibited by the titles under which said lands are held (*l*); and in order that the feudal title may be completed in the person of the heir so served, it shall be lawful and competent for him to use such extracted decree in the same manner and to the same effect as if such extracted decree were actually a disposition of the nature above mentioned, and in particular he shall be entitled to record the same in the appropriate register

of sasines as a conveyance under this Act, along with a warrant of registration thereon on his behalf (*m*); and such extracted decree and warrant of registration, upon being so recorded in favour of such heir, shall form as effectual an investiture in favour of such heir in the lands where the same are held by burgage tenure as if cognition and entry had taken place in due form, and an instrument of cognition and sasine in regard to such lands and in favour of such heir had at the date of so recording such extracted decree and warrant, or such instrument of sasine, been expedite and recorded in the burgh register of sasines according to the law and practice prior to the 1st day of *October* 1860, and in the lands where the same are not held by burgage tenure, holding base of the deceased and his heirs until confirmation thereof shall be granted by the deceased's superior (*n*) as if such investiture had been created by a disposition from the deceased as aforesaid, recorded, with warrant of registration thereon as aforesaid, in the appropriate register of sasines, in favour of such heir at the date of so recording the said extracted decree of service; and in order that the feudal title to said lands may be completed in the person of the said heirs and successors and assignees of the heir so served not having completed a feudal title thereto in his own person, it shall be lawful and competent to such heirs, successors, and assignees to use such extracted decree as if the same had been an unrecorded conveyance of the said lands in favour of the heir so served to which they had acquired right, and to complete their titles to said lands in the manner and to the effect provided by this Act in the case of a party having right to an unrecorded conveyance (*o*): Provided always, that notwithstanding of any prohibition against subinfeudation or alternative holding contained in the charter or contract or other deed by which the vassal's right is constituted, the title so completed shall, in the case of lands not held by burgage tenure, form a valid feudal investiture in favour of the heir so served, or of his heirs, successors, or assignees, as the case may be, without prejudice to the right of the superior to require the heir so served, or his heirs, successors, and assignees, as the case may be, to enter forthwith as accords of law, and to deal otherwise with the heir so served, and his heirs, successors, and assignees as vassals unentered (*n*): Provided also, that nothing herein contained shall be held to repeal or alter an Act of the Parliament of *Scotland* passed in the year 1661, intituled "*Act concerning Appearance and Heirs, their Payment of their Predecessors' and*

their own Debts" (p), or an Act of the said Parliament passed in the year 1695, intituled "*Act for Obviating the Frauds of Appearance and Heirs*" (q).

(a) This is inaccurately expressed. The meaning is—to the heir who has obtained the decree of special service, and to his assignees.

(b) This section re-enacts, but with very considerable alterations and additions, the provisions of 10 and 11 Vict. c. 47, secs. 21 and 22, which took effect from and after 15th November 1847.

The object of the section is to put an heir who has obtained a decree of special service, but who has not taken infeftment thereon, in the same position as if he had obtained from his ancestor a disposition of the lands contained in the service. At common law, when the proprietor of a feudal estate died intestate, his heir had no right to the estate or power to dispose of it until he was entered with the superior as vassal in place of the deceased proprietor. On the other hand, if the ancestor had not been infeft, but had merely a personal right to the lands, such right was effectually vested in the heir by a general service so as to be transmissible to his own heirs or assignees without infeftment or entry with the superior. This anomaly was partially removed by section 21 of the Services of Heirs Act of 1847 (corresponding to the present section), which provided that for the purpose of completing the feudal title of an heir who had obtained a decree of special service, but of such heir only, every such decree should be equivalent to a disposition of the lands contained in the service, &c. It was, however, held in the case of *Moreton's Trustees v. Lockhart*, July 19, 1854, 16 D. 1108, that this merely provided, so to speak, machinery for the purpose of completing a feudal title, and that where the heir died without being infeft, no right was transmitted to his heirs, assignees, or disponees. The present section has been framed so as to remedy this state of matters, and it expressly confers on the heir a transmissible right.

Except as regards the completion of the title of an heir who has obtained a decree for special service, this section is now superseded by the ampler provisions of section 9 of the Conveyancing Act, under which a personal right to land vests in the heir by his mere survivance of his ancestor, without the necessity of service or any other procedure.

(c) Viz., in section 36, *ante*, p. 112.

(d) Viz., the Services of Heirs Act of 1847, repealed and consolidated by the present Act; see section 4, *ante*, p. 9.

(e) Viz., 31st July 1868.

(f) As to reduction, see section 43, *ante*, p. 121.

(g) That is to say, a disposition containing, &c.

(h) Printed *ante*, p. 23.

(i) Section 25 of the Conveyancing Act abolishes the distinction between lands held burgage and lands held feu, *inter alia*, in so far as regards the conveyances relating thereto.

(j) That is to say, the decree of special service is assimilated to a general disposition by a person under no legal incapacity to grant such a deed.

(k) The part of the sixth section here referred to is now virtually repealed; see *ante*, pp. 25 and 26.

(l) This clause is now superseded by the ampler provisions of the Conveyancing Act. See note (b) *supra*.

(m) In the mode prescribed by section 15, *ante*, p. 46.

(n) Section 25 of the Conveyancing Act abolishes the distinction between burgage and feu, *inter alia*, in so far as regards the completion of titles; and section 4 of that Act renders infeftment equivalent to entry with the superior.

(o) Viz., in sections 22 and 23, *ante*, pp. 71 and 76.

(p) Viz., the Act 1661, c. 24, which provides that the "creditors of the defunct shall be preferred to the creditors of the appearand heir in time coming, as to the defunct's estate; providing always, that the defunct's creditors do diligence against the appearand heir, and the real estate belonging to the defunct within the space of three years after the defunct's death;" and further, that "no right or disposition made by the said appearand heir, in so far as he may prejudge his predecessor's creditors, shall be valid unless it be made and granted a full year after the defunct's death." See Bell's Commentaries, 5th ed., vol. i., p. 729, M'Laren's ed., p. 765.

(q) Viz., the Act 1695, c. 24, which, *inter alia*, provides that where an heir has possessed on apparency for three years or upwards, the next heir completing his title by passing over the person so possessing shall be liable for the debts and deeds of such person to the extent of the value of the lands. See Bell's Commentaries, 5th ed., vol. i., p. 664, M'Laren's ed., p. 708.

47. *A Special Service not to infer a general representation, either active or passive (a).*—No decree of special service obtained in virtue of the said recited Act 10th and 11th of the reign of Her present Majesty

chapter 47 (*b*), or to be obtained in virtue of this Act, shall operate or be held as equivalent to or as implying a general service to the deceased in the same character, except as to the particular lands therein embraced (*c*); and every such decree of special service shall infer only a limited passive representation of the deceased, and the person thereby served as heir shall be liable in respect of such service for the deceased's debts and deeds only to the extent or value of the lands embraced by such special service, and no further (*d*).

(*a*) This section merely re-enacts, with slight verbal alterations, the provisions of 10 and 11 Vict. c. 47, sect. 23, which took effect from and after 15th November 1847.

The object of the enactment is to abolish the old rule of the common law under which a special service implied a general service in the same character, thus inferring a general passive representation, and making the heir liable for all the debts of the deceased.

This object, however, is now more thoroughly attained by the ampler provisions of section 12 of the Conveyancing Act, which enacts that an heir shall in no case be liable for the debts of his ancestor beyond the value of the estate to which he succeeds.

(*b*) Viz., the Services of Heirs Act of 1847, the provisions of which are consolidated by the present Act.

(*c*) But, under section 48, an heir petitioning for special service in any character may pray also for general service in the same character.

(*d*) This clause is now practically superseded by section 12 of the Conveyancing Act; see note (*a*) *supra*.

48. *Petitioner for Special Service may petition for General Service (a).*—In any petition for special service, in whatever character, it shall be competent to the petitioner to pray (*b*) for general service in the same character as that in which special service is sought, and decree may be pronounced in terms of such prayer as well as for special service; and no further notice or publication of the petition of service shall in such case be necessary than is hereby required for such petition of special service (*c*).

(*a*) This section re-enacts, with one alteration, the provisions of 10 and 11 Vict. c. 47, sec. 24, which took effect from and after 15th November 1847. The alteration consists in the substitution of the

words "in whatever character" in place of the words "as heir of line or heir-male."

The object of the enactment is merely to allow a petition for general service to be combined with a petition for special service in the same character.

(b) For form of prayer, see *ante*, p. 98.

(c) As to the publication required, see section 30, *ante*, p. 100.

49. *A General Service may be applied for and obtained to a limited effect by annexing a specification; and it shall infer only a limited passive representation (a).—It shall be lawful for any person presenting a petition for general service to a deceased person to state in such petition, in the form, or as nearly as may be (b) in the form No. 1. of Schedule (R.) hereunto annexed, that he desires the effect thereof to be limited to certain lands which belonged to the deceased, and which shall be embraced in a particular specification thereof, to be annexed to such petition for general service, which specification shall be in the form or as nearly as may be in the form No. 2. of the said Schedule (R.), and shall be subscribed by the petitioner or his mandatory (c); and in preparing an abstract of such petition for insertion in the minute book of the Court in which it shall be presented, and for publication, it shall be described as a petition for general service with specification annexed; and the Sheriff (d) to whom such petition for general service with specification annexed shall be presented shall, in pronouncing decree of service on such petition, make reference to the specification annexed thereto, and shall limit such decree of service to the lands described in the said specification, and the effect of such decree shall accordingly be taken and held in law to be so limited; and a copy of such specification shall be embodied in the extract of the said decree, and recorded as part thereof; and every such decree of general service, obtained in virtue of said last-recited Act (e) or of this Act, with specification annexed, shall infer only a limited passive representation of the deceased; and the person thereby served as heir shall be liable in respect of such service for the deceased's debts and deeds only to the extent or value of the lands contained in the relative specification.*

(a) This section merely re-enacts, with slight verbal alterations, the provisions of 10 and 11 Vict. c. 47, sec. 25, which took effect from and after 15th November 1847.

The object of the enactment was to provide a simple mode by which the liability inferred by a general service might be limited. At common law an heir taking up by service the *universitas* of a succession was liable for all the debts of the deceased, whatever might be the value of the estate to which he succeeded. The Act 1695, c. 24, allowed the heir to be served *cum beneficio inventarii*, provided that within the *annus deliberandi*, and before being served, he gave up and recorded an inventory of his ancestor's estate, the

inventory being referred to in the subsequent service, with the effect of limiting the heir's liability to the amount of the inventory. This procedure was superseded by the simpler form authorised by the present section.

This enactment has, however, been practically superseded by section 12 of the Conveyancing Act, which provides that "an heir shall not be liable for the debts of his ancestor beyond the value of the estate of such ancestor to which he succeeds." As no procedure whatever is required in order to effect this limitation, there is now no use in going through the forms authorised by this section, but these forms are still competent.

(b) There must be no real deviation from the form prescribed.

(c) A mandatory requires to be specially authorised; see section 29, *ante*, p. 92.

(d) See interpretation clause (section 3, paragraph 3), *ante*, p. 5.

(e) Viz., 10 and 11 Vict. c. 47, the provisions of which are consolidated by the present Act.

SCHEDULE (R.) (a).

Form for a General Service where it is to be limited in its effects by a Specification annexed.

No. 1.

The petition will be in the form of Schedule (P.) (b), adding at the close of the statement of the petitioner, but the petitioner desires that his general service shall be limited to the contents of the specification annexed; and adding at the close of the prayer of petition, but under limitation as aforesaid to the contents of the specification annexed.

No. 2.

Specification of the lands and other heritages which belonged to the deceased C.D. referred to in the petition for general service presented to the Sheriff of _____ by A.B. as heir of _____ in general to the said deceased C.D.

[Here insert a description of the lands and other heritages intended to be included in the service, distinguishing each separate property or heritage, if there are more than one, by a separate number.]

[Signed by the petitioner or his mandatory.]

(a) Superseded by section 12 of the Conveyancing Act; see note (a) *supra*.

(b) Schedule (P.) is printed *ante*, p. 95.

50. Jurisdiction of the Sheriff of Chancery (a).—
The Sheriff of Chancery (b) appointed or to be ap-

pointed in virtue of this Act shall have and possess such and the like authority and jurisdiction to entertain, try, and adjudicate, but in the manner prescribed and directed by this Act, all questions of and relating to the service of heirs, as the Sheriff of Chancery appointed in virtue of the said recited Act 10th and 11th of the reign of Her present Majesty, chapter 47 (c), or any Sheriff or Judge Ordinary, now has and possesses in any case competent before such Sheriff (d) or Judge Ordinary, or in any case now or formerly competent before the Sheriff of *Edinburgh* acting on special commission; and such Sheriff of Chancery shall hold his Court in any court room within the Parliament or new Session House of *Edinburgh* which has been or may be assigned by the Lords of Session for that purpose, or in any other place which may be so assigned.

(a) This section merely re-enacts, with verbal alterations, the provisions of 10 and 11 Vict. c. 47, sec. 27, which took effect from and after 15th November 1847.

Its object is to define the authority and jurisdiction of the Sheriff of Chancery, the office having been created by that Act.

By section 57 of the Conveyancing Act the Sheriff of Chancery is required to discharge the duties of the office of presenter of signatures, in so far as the same continue to be necessary.

(b) See interpretation clause (section 3, paragraph 3), *ante*, p. 5.

(c) *Viz.*, the Services of Heirs Act of 1847, the provisions of which are consolidated by the present Act.

(d) See interpretation clause (section 3, paragraph 3), *ante*, p. 5.

51. Power to the Court of Session to pass Acts of Sederunt (a).—It shall be competent to the said Court of Session, and they are hereby authorized and required, from time to time to pass such Acts of Sederunt as shall be necessary or proper for regulating in all respects the proceedings under this Act before the Sheriff of Chancery (b) or Sheriffs (b) of counties, and following out the purposes of this Act in regard of these proceedings, and regulating the times at which the Sheriff

of Chancery shall hold his Courts, and the fees to be paid in respect of any of the proceedings to be taken in virtue hereof (c); and the charges to be made by agents and solicitors, whether in the Inferior Court or Court of Session, for any proceedings under this Act, shall be audited and taxed in the same manner as charges for other judicial proceedings in the said Courts respectively are audited and taxed: Provided always, that accounts of expenses in the Sheriff Court of Chancery shall be audited and taxed by the auditor of the Court of Session, and the decree for such expenses shall be extractable by the extractor of the Court of Session in the same manner as a decree of that Court, and all such decrees shall be held to be interim decrees, and the warrants shall, after extract, be retransmitted to the Sheriff Clerk of Chancery (d).

(a) This section merely re-enacts, with the addition of the proviso at the end of the section, the provisions of 10 and 11 Viet. c. 47, sec. 28, which took effect from and after 15th November 1847.

Its object is to authorise the Court of Session to regulate the procedure in services, and to fix the fees therefor.

(b) See interpretation clause (section 3, paragraph 3), *ante*, p. 5.

(c) No Act of Sederunt has been passed since the passing of the present Act; but under section 162 the Acts of Sederunt passed under the authority of the Services of Heirs Act of 1847 are still in force. These will be found printed *ante*, p. 101 *et seq.*

(d) The addition of this proviso removes a difficulty arising under the former Act as to how such expenses should be taxed and the decree therefor enforced, there being no auditor or extractor in the Sheriff Court of Chancery.

52. Appointment of Sheriff of Chancery (a).—The Sheriff of Chancery, and Sheriff Clerk of Chancery, and Clerk to the Presenter of Signatures in Exchequer appointed in virtue of the said recited Act 10th and 11th of the reign of Her present Majesty, chapter 47 (b), shall, until their respective deaths or resignations, be appointed and are hereby respectively appointed to be Sheriff of Chancery, and Sheriff Clerk of Chancery and Clerk to the Presenter of Signatures in Exchequer, for the pur-

poses of this Act; and after the death or resignation of the said Sheriff of Chancery, it shall be lawful for Her Majesty from time to time to appoint a fit person, being a person qualified for the office of Sheriff of a county in *Scotland* (c), to be the Sheriff of Chancery for the purposes of this Act, and after the death or resignation of the present Sheriff Clerk of Chancery, and Clerk to the Presenter of Signatures in Exchequer, also to appoint a fit person to act both as Sheriff Clerk of Chancery and as Clerk to the Presenter of Signatures in Exchequer for the purposes of this Act.

(a) This section re-enacts, with some additions, the provisions of 10 and 11 Vict. c. 47, sec. 29, which took effect from and after 15th November 1847. Its object is to regulate the appointment of the Sheriff of Chancery, &c.

Section 57 of the Conveyancing Act abolishes the offices of Presenter of Signatures and of Clerk to the Presenter of Signatures; and the words printed in small type have accordingly been repealed by the Statute Law Revision Act of 1875 (38 and 39 Vict. c. 66).

(b) Viz., the Services of Heirs Act of 1847, the provisions of which are consolidated by the present Act.

(c) By section 2 of 1 and 2 Vict. c. 119, it is provided that "every person who shall be hereafter appointed to the office of Sheriff Depute shall be an advocate of three years' standing at least, and shall have been at the time of his appointment in practice before and in habitual attendance upon the Court of Session or acting as a Sheriff-Substitute."

53. *Agents may practise before Sheriff Courts* (a).—It shall be lawful and competent for agents qualified to practise before the Court of Session or before any Sheriff Court to practise before the Sheriff of Chancery as well as in the ordinary Sheriff Courts in petitions of service.

(a) This section merely re-enacts 10 and 11 Vict. c. 47, sec. 31, which took effect from and after 15th November 1847. Its object was to allow all properly qualified agents to practise in petitions for service, in spite of the monopolies formerly enjoyed by the members of certain societies of law-agents.

This enactment is now superseded by the ampler provisions of the Law Agents Act of 1873 (36 and 37 Vict. c. 63), under which an enrolled law-agent is entitled to practise in any court of law in Scotland. See Begg's Treatise on Law Agents, p. 23.

54. *Salaries of Sheriff of Chancery and Sheriff Clerk of Chancery (a).*—The Sheriff of Chancery and Sheriff Clerk of Chancery shall respectively receive such salaries as shall from time to time be fixed by the Commissioners of Her Majesty's Treasury, and such salaries and any increase thereof shall be payable out of the funds from which the salaries of Sheriffs of counties are payable (b); and the said Sheriff shall be entitled to a retiring annuity, subject to the same conditions and provisions as Sheriffs of counties, and payable out of the same funds from which the salaries and annuities of the said Sheriffs are payable.

(a) This section re-enacts, with considerable alterations and additions, the provisions of 10 and 11 Vict. c. 47, sec. 32, which took effect from and after 15th November 1847.

(b) Viz., out of the Consolidated Fund.

55. *Salary to be regulated by the Commissioners of the Treasury on vacancy (a).*—Whenever any vacancy shall occur in the office of Sheriff of Chancery, it shall be lawful for the Commissioners of Her Majesty's Treasury, or any two or more of them, to regulate the salary of the Sheriff of Chancery as the then circumstances of the office may require.

(a) This section merely re-enacts, with the substitution of the word "two" in place of the word "three," the provisions of 10 and 11 Vict. c. 47, sec. 33, which took effect from and after 15th November 1847. Its object is to regulate from time to time the salary to be paid to the Sheriff of Chancery.

56. *Compensation already awarded not to be affected (a).*—Nothing herein contained shall affect the right of any person to whom compensation shall have been awarded by way of annuity in virtue of the provisions of the 34th section of the last-recited Act (b) to receive such compensation: Provided always, that if any person to whom such compensation may have been awarded has been or shall hereafter be appointed

to any other public office, such compensation shall be accounted *pro tanto* of the salary payable to such person in respect of such other office while he shall continue to hold the same.

(a) This section is a new enactment, thus taking effect from and after 31st December 1847, except the proviso which is a re-enactment of part of the 34th section of the Act here mentioned, taking effect from and after 15th November 1847.

(b) Viz., 10 and 11 Vict. c. 47, sec. 34, which provided that compensation, either by the payment of a gross sum or by way of annuity, might be awarded by the Commissioners of Her Majesty's Treasury to any person who suffered loss through the operation of that Act—that is to say, to any official person whose fees were affected by the Act.

57. Compensation to be paid (a).—The several compensations which may have been awarded under the authority of the last-recited Act (b), shall be payable out of the monies which by the Acts of the 7th and 10th years of the reign of Her Majesty Queen Anne were made chargeable with the fees, salaries, and other charges allowed or to be allowed for the keeping up of the Courts of Session, Justiciary, or Exchequer in *Scotland*.

(a) This section merely re-enacts, *mutatis mutandis*, 10 and 11 Vict. c. 47, sec. 35, which took effect from and after 15th November 1847.

(b) Viz., the Services of Heirs Act of 1847 (10 and 11 Vict. c. 47), the provisions of which are consolidated by the present Act.

58. Provisions as to depending Petition for Service (a).—All petitions for service which at the commencement of this Act shall be depending before the Sheriff of Chancery or the Sheriff of any county acting under the said Act of the 10th and 11th of Her Majesty Queen Victoria, shall thereafter depend before the Sheriff of Chancery or the Sheriff of such county respectively acting under this Act, and shall be taken up by such Sheriff at the stage at which the proceedings in such petitions shall have arrived at the commencement of this Act, and shall be thereafter proceeded with by such Sheriff according to the provisions of this Act as if the same had been presented to such Sheriff after the commencement of this Act; and (b) in all cases in which before or after the com-

mencement of this Act a petition for service shall have been or shall be advocated or (c) appealed (d) to the Court of Session, or a process of reduction (e) shall have been or shall be brought of any decree or service pronounced before or after the commencement of this Act, any remit (f) which in such process of advocacy or (c) appeal or reduction has been or shall be made by the said Court to the Sheriff may and shall be executed and carried out by the Sheriff to whom the petitions or petition advocated or (c) appealed, or in which the decree under reduction may have been pronounced, was originally presented, or before whom the same would have depended if the same had not been presented till after the commencement of this Act.

(a) This section is a new enactment, thus taking effect from and after 31st December 1868. Its object is to prevent any difficulty occurring in the case of such services as were in course of being carried through at the date when the present Act came into operation.

(b) The preceding part of this section, being now unnecessary, has been repealed by the Statute Law Revision Act of 1875 (38 and 39 Vict. c. 66).

(c) The process of advocacy is abolished by section 64 of the Court of Session Act of 1868 (31 and 32 Vict. c. 100).

(d) As to appeals, see sections 41 and 42, *ante*, p. 117 *et seq.*

(e) As to reductions, see section 43, *ante*, p. 121.

(f) The Court of Session cannot themselves serve a petitioner; they must remit to the Sheriff to do so. See sections 41 and 42, *ante* p. 117 *et seq.*

59. (a) *Unnecessary to libel and conclude for Decree of Special Adjudication* (b).—Whereas it is inconvenient in practice to libel and conclude for general adjudication of lands as the alternative only of special adjudication, in terms of an Act of the Parliament of *Scotland* passed in the year 1672 (c): It shall not be necessary to libel or conclude for

special adjudication, and it shall be lawful to libel and conclude and decern for general adjudication without such alternative, anything in the said last-recited Act of the Parliament of *Scotland*, or in any other Act or Acts of the Parliament of *Scotland* or of *Great Britain*, or of the United Kingdom of *Great Britain* and *Ireland*, to the contrary notwithstanding.

(a) Here commences the part of the Consolidation Act (extending to section 62 inclusive) which relates to the completion of the title of an adjudger where the proprietor of the lands sought to be adjudged is dead. Except in section 59, the Act does not deal with the process of adjudication in cases where the proprietor is in life, but by the interpretation clause (section 3, paragraph 7), *ante*, p. 6, all decrees of adjudication are included under the words deed or conveyance, so that any adjudger may obtain infestment by recording his decree with warrant of registration.

The object of this part of the Act is to consolidate the various enactments passed from time to time since the year 1847, with a view to simplifying the procedure required to effect an adjudication or judicial transfer of lands from a deceased proprietor. As to the cumbrous proceedings which were necessary before 1847, see Bell's Lectures on Conveyancing, 1st ed., p. 760, and Juridical Styles, 3d ed., vol. iii., p. 324.

(b) This section merely re-enacts, with verbal alterations, the provisions of 10 and 11 Vict. c. 48, sec. 18, as regards lands not held burgage, and 10 and 11 Vict. c. 49, sec. 10, as regards lands held burgage, both of which Acts took effect from and after 30th September 1847.

(c) Viz., the Scotch Act 1672, c. 19, introducing the process of adjudication for debt. It required the creditor to conclude for special adjudication of such specified part of the debtor's lands as might be worth the debt, principal, interest, and penalty, and only alternatively for general adjudication of the debtor's whole lands. See Juridical Styles, 3d ed., vol. iii., p. 326.

The Act referred to never had any application to an adjudication for implement of a specific obligation to convey lands.

60. *General and special and general special charges to be no longer necessary (a).*—It shall not be competent to use letters of general or special charge, or general special charge (*b*), but in an action of constitution of an ancestor's debt or obligation against his unentered heir the citation on and execution of the

summons in such action shall be held to imply and be equivalent to a general charge, the induciæ of which shall expire with the induciæ of such summons, and shall infer the like certification with such general charge; and it shall thereafter be competent to adopt under such summons the same procedure in all respects, and to pronounce the same decree, which would have been competent had such summons been preceded by letters of general charge duly executed against such heir, according to the law and practice in use prior to the 30th day of *September* 1847 (c), which decree shall be a valid decree of constitution; and in an action of adjudication, whether for debt or in implement, against such heir following on such decree of constitution, or in an action of adjudication against an unentered heir founded on his own debt or obligation, the citation on and execution of the summons of adjudication shall be held to imply and be equivalent to a special charge or general special charge, as the circumstances may require, the induciæ of which charge shall expire with the induciæ of such summons, and shall infer the like certification with such special charge or general special charge, as the case may be; and it shall thereafter be competent to adopt under such summons the same procedure in all respects, and to pronounce the same decree, which would have been competent had such summons been preceded by letters of special charge or general special charge, as the case may be, duly executed against such heir according to the law and practice in use prior to the 30th day of *September* 1847 (c); which decree shall be a valid decree of adjudication, whether for debt or in implement; and in actions of constitution and adjudication against an unentered heir on account of his ancestor's debt or obligation, for the purpose of attaching the ancestor's heritable estate, it shall not be necessary to raise a separate summons of constitution and a separate summons of adjudication (d), but both actions may be combined in one summons, whether the heir renounce the succession or not, and the citation on and execu-

tion of such summons shall be held to imply and be equivalent to a general charge, or to a general charge and a special charge, or to a general charge and a general special charge, as the circumstances of the case may require, the induciæ of which shall expire with the induciæ of such summons, and shall infer the like certification with such general charge, or general charge and special charge, or general charge and general special charge, as the case may be; and in such combined action of constitution and adjudication it shall be competent to adopt the same procedure in all respects, and to pronounce the same decree or decrees, which would have been competent had such summons been preceded by letters of general charge duly executed against such heir according to the law and practice in use prior to the 30th day of *September* 1847 (c), or which would have been competent had a separate summons of constitution and a separate summons of adjudication been raised against such heir, and been preceded respectively by letters of general charge, or of special charge, or general special charge, duly executed against such heir according to the law and practice in use prior to the 30th day of *September* 1847 (c), which decree or decrees shall be valid decrees of constitution, or of adjudication, whether for debt or in implement, or of constitution and adjudication, whether for debt or in implement, as the case may be; and in such combined action of constitution and adjudication, whether for debt or in implement, it shall be competent to pronounce decree of constitution and adjudication in one and the same interlocutor, and to extract the same in one and the same extract, which decree shall have the full force and effect of a decree following upon a summons of constitution preceded by letters of general charge, and also of a decree following upon a summons of adjudication, whether for debt or in implement, preceded by letters of special or general special charge, as the case may be; anything in an Act of the Parliament of *Scotland* passed in the year 1540 (c), and in another Act of the Parliament of

Scotland passed in the year 1621 (*f*), or in any other Act of the Parliament of *Scotland* or of *Great Britain* or of the United Kingdom of *Great Britain* and *Ireland*, or any law or practice to the contrary notwithstanding (*g*).

(*a*) This section merely re-enacts, with verbal alterations, the provisions of 10 and 11 Vict. c. 48, sec. 16, abolishing letters of charge in the case of lands not held burgage; 10 and 11 Vict. c. 49, sec. 8, abolishing them in the case of lands held burgage—both of which Acts took effect from and after 30th September 1847; 21 and 22 Vict. c. 76, sec. 27, which took effect from and after 1st October 1858, allowing an action of constitution and an action of adjudication to be combined in one summons in the case of lands not held burgage; and 23 and 24 Vict. c. 143, sec. 16, which took effect from and after 1st October 1860, extending this enactment to the case of lands held burgage.

The object of the section is to simplify the procedure in actions of adjudication where the proprietor of the lands sought to be adjudged is dead. As to the old procedure, see *Juridical Styles*, 3d ed., vol. iii., p. 324.

By section 12 of the Conveyancing Act it is provided that an heir shall not be liable for the debts of his ancestor beyond the value of the estate to which he succeeds, and that if an heir shall renounce the succession the creditors of the ancestor shall have the same rights against the estate as upon a renunciation according to the law before the commencement of the Conveyancing Act.

(*b*) Letters of general charge were a signet writ ordaining an heir to enter himself heir to his deceased ancestor, under certification that if he failed the complainer should have the same action and process against him as if he had complied. Letters of special charge were used where the ancestor was infeft in the lands to which the heir was served to enter; and letters of general special charge were used where the subjects belonging to the ancestor did not require sasine or were not perfected by sasine.

(*c*) That is to say, the date from and after which the corresponding enactments in the Lands Transference Acts of 1847, referred to in note (*a*), *supra*, took effect.

(*d*) It is still competent to raise separate summonses. The combination here authorised was not competent prior to the Acts of 1858 and 1860; see note (*a*) *supra*.

It appears competent, under the present section, to raise a combined summons of constitution and adjudication against an heir, whether for his own debt or the debt of his ancestor, even where such debt is not liquidated, or due under any document of debt.

(*e*) Viz., the Act 1540, c. 106, which introduced letters of charge.

(*f*) Viz., the Act 1621, c. 27, which extended the use of letters of charge to the case of an heir who was himself the debtor.

(g) The following is the modern form of a summons of constitution and adjudication against an heir for his ancestor's debt :—

VICTORIA, &c.—Whereas it is humbly meant and shown to us by our lovite A., pursuer, against B., defender, in terms of the condescendence and note of pleas in law hereunto annexed : Therefore the said defender, as eldest son (*or otherwise, as the case may be*) and heir of the deceased C., or as representing him upon one or other of the passive titles known in law, ought and should be decerned and ordained by decree of the Lords of our Council and Session to make payment to the pursuer of the principal sum of £ (*here specify the ground of debt as shortly as possible, and if the debt is due under a bond, bill, or decree, &c., describe the document by date, and the names of parties*), interest thereof from to and in time coming during the not-payment (*if the document of debt contain a penalty stated at a specific sum, or as a "fifth part more," here conclude for it*), after the form and tenor of said (*mention the document of debt*) : And further it is necessary in terms of the Act of Parliament, 1672, c. 19, entituled "Act anent Adjudications," that All and Whole the lands and others after described and referred to, pertaining heritably or otherwise to the defender as heir aforesaid, his predecessors and authors, viz., All and Whole (*here describe them*), with the teinds, parsonage and vicarage, thereof, and all right, title, interest, claim of right, property, and possession which the said B., his predecessors or authors, had or could pretend to the said lands, rights, and others, or to any portion thereof, or which the defender as heir might have, together with all and sundry writs, evidents, rights, titles, and securities whatever of and concerning the said lands, with all reversions of the same, legal or conventional, ought and should be adjudged by decree of the Lords of our Council and Session from the said B. as eldest son and heir of the said deceased C., and from all others having or pretending to have right thereto, and decerned and declared by decree foresaid to pertain and belong to the pursuer and his heirs and assignees heritably for payment and satisfaction to them of the foresaid principal sum, interest thereof, and penalty above stated (*if any*) according as the same shall amount when accumulated at the date of the decree to follow hereon, and of the interest of the said accumulated sum during the not-redemption of the said lands, rights, and others, besides the composition to superiors and the expenses of recording the said decree of adjudication in the Register of Sasines, with the interest of the said composition and expenses from the time of disbursing the same during the not-redemption ; or otherwise, and in case the defender shall renounce to be heir to the said C., and be assoilzied from any passive title, but decerned against *cognitionis causa tantum*, then and in that event the said lands, rights, and others above described and referred to, together with the rents, maills, and duties thereof from and since the death of the said C., which happened on or about the day of , and in time coming during the not-redemption, and all right, title, and interest, claim of right, property, and possession which the said C. had or could pretend to

the said lands and others, together with all and sundry writs, evidents, rights, titles, and securities whatever of and concerning the said lands and others, with all reversions of the same, legal or conventional, ought and should be adjudged, decerned, and declared by decree foresaid to pertain and belong to the pursuer and his heirs and assignees heritably for payment and satisfaction to them of the foresaid principal sum, interest thereof, and penalty above specified (*if any*), according as the same shall amount when accumulated at the date of the decree of adjudication to follow hereon, and of the interest of the said accumulated sum during the not-redemption of the said lands, rights, and others, besides the composition to superiors, and the expenses of recording the said decree of adjudication in the Register of Sasines, with the interest of the said composition and expenses from the time of disbursing the same during the not-redemption, after the form and tenor of the foresaid Act of Parliament, laws and practice of Scotland, used and observed in the like cases, as is alleged.—OUR WILL IS HEREOFRE, &c.

The above form may readily be adapted to meet the other cases contemplated by the present section.

61. *Actions of Constitution and Adjudication against Apparent Heir may be insisted in after the lapse of six months (a).*—Actions of constitution and actions of constitution and adjudication against an apparent heir on account of his ancestor's debt or obligation, for the purpose of attaching the ancestor's heritable estate, and actions of adjudication against such heir on account of his own debt or obligation, for the purpose of attaching such estate, may be insisted in at any time after the lapse of six months from the date of his becoming apparent heir, any law or practice to the contrary notwithstanding.

(a) This section merely re-enacts provisions contained in 21 and 22 Vict. c. 76, sec. 27, which took effect from and after 1st October 1858, as regards lands not held burgage, and 23 and 24 Vict. c. 143, sec. 16, which took effect from and after 1st October 1860, as regards lands held burgage.

The object of the section is to reduce to six months the *annus deliberandi* formerly allowed to an heir to consider whether he would take up or renounce the succession.

Section 9 of the Conveyancing Act provides that a personal right to an estate in land shall vest in the heir by his mere survivance of the person to whom he is entitled to succeed; but this does not appear to deprive him of his right to the six months, unless, of course, in the case of his incurring a passive representation by intromitting with the estate.

62 (a). *Effect of a Decree of Adjudication or Sale.*—In all cases a decree of adjudication, whether for debt or in implement, or a decree of constitution and adjudication, whether for debt or implement, or a decree of declarator and adjudication, or a decree of sale, if duly obtained in the form prescribed by this Act, or obtained, if prior to the commencement of this Act, in the form then in use, shall, except in the case where the subjects contained in the decree of adjudication or of constitution and adjudication are heritable securities, be held equivalent to and shall have the legal operation and effect of a conveyance in ordinary form of the lands therein contained granted in favour of the adjudger or purchaser by the ancestor of such apparent heir, or by the owner or seller of the lands adjudged or sold, although in nonage or of insane mind, to be holden in the case of lands not held by burgage tenure in the manner and to the effect and subject to the provisions enacted and provided by the 6th section of this Act in the case of conveyances in which no manner of holding is expressed, and to be holden of Her Majesty in free burgage in the case of lands held by burgage tenure; and it shall be lawful and competent to such adjudger or purchaser to complete feudal titles to said lands, not only by infeftment on such decree as a conveyance or unrecorded conveyance, as the case may be, in the manner provided by this Act, but also when the lands are not held by burgage tenure, by obtaining from the superior charter of adjudication or of sale of said lands and expeding infeftment on such charter in common form or as a conveyance or unrecorded conveyance, as the case may be, in the manner provided by this Act, or where the ancestor of such apparent heir, or the owner or seller of the lands adjudged or sold, shall have been or shall be entered with his superior, or in a situation to charge such superior under the powers in this Act contained, to grant entry by confirmation by taking infeftment on such decree as a conveyance or unrecorded conveyance, as the case may be, in the manner provided by this Act, which infeftment shall, with such decree, be an effectual feudal investiture in the said lands in terms of such decree, holding base of the party whose lands are adjudged or sold, and his heirs, until confirmation thereof shall be granted by the superior of the lands in the same manner and to the same effect as if the party whose lands are sold or adjudged had granted a disposition of the lands to the adjudger or purchaser in the terms of the said decree, with an obligation to infest *a me vel de me* to be completed by confirmation, and a precept of sasine, and the adjudger or purchaser had been infest on such precept, and the effect of the charter or writ of confirmation of such decree or of the infeftment thus proceeding upon the same shall be to make the lands hold immediately of and under such superior; but the right of the superior to the composition payable by the adjudger or purchaser as due under the existing law is hereby reserved entire, and the adjudger or purchaser, by taking infeftment on any such decree in any of the modes above mentioned, shall become indebted in such composition to the superior, and shall be bound to pay the same on the superior tendering a charter or writ of confirmation, whether such charter or writ shall be accepted or not, and the superior shall be entitled to recover such composition as accords of law; and it is hereby provided that such infeftment on any such decree shall, without prejudice to any other diligence or procedure, be of itself sufficient to make the adjudi-

cation effectual in all questions of bankruptcy or diligence : Provided always, that where the investiture of any lands has imposed or shall impose a prohibition against sub-infeudation or alternative holding, such adjudger or purchaser shall, in respect of such recorded decree or notarial instrument, and notwithstanding any such prohibition, be deemed and taken to be duly infeft in the lands adjudged or sold as from the date of recording such decree or instrument, but without prejudice to the right of the superior to require such adjudger or purchaser to enter forthwith as accords of law, and to deal with such adjudger or purchaser as with a vassal unentered.

(a) This section, as here printed, was one of the amended sections substituted by the Amendment Act of 1869 ; see note (a), *ante*, p. 1, and note (a), *ante*, p. 3. The amendment consisted merely in the addition of the words "or a decree of declarator and adjudication," occurring in the first clause.

It is now repealed by section 62 of the Conveyancing Act, which substitutes an amended section, to be read and construed as if it had originally been section 62 of the Consolidation Act.

63. (a) *Signatures for Crown Writs abolished* (b). —It shall not be necessary, in order to the obtaining of any Crown writ (c), that any signature (d) shall be presented and passed in Exchequer, or that any precept (e) shall be framed and issued thereon as preliminary to the granting of such writ, and all Crown writs (c) shall be obtained in the manner directed by this Act (f), and not otherwise.

(a) Here commences the part of the Consolidation Act (extending to section 96 inclusive) which relates to Crown charters and precepts from Chancery. This is little more than a re-enactment of the Crown Charters Act of 1847 (10 and 11 Vict. c. 51), as modified by the Titles to Land Act of 1858 (21 and 22 Vict. c. 76).

Section 4, sub-section 1, of the Conveyancing Act having rendered charters, precepts, or other writs by progress incompetent, the only Crown charters or writs still competent are original charters (including charters of bastardy, charters of ultima hæres, charters upon forfeitures for high treason, and charters of mines and minerals under the Act of 5th June 1592, not printed in the small edition of the Scotch Acts), charters of novodamus, and precepts or writs (of *clare constat*) from Chancery. These last are never applied for now, as they are granted only after a service, and as an heir with a decree of service can complete his title under the provision of the Conveyancing Act by simply recording the decree or a notarial instrument thereon.

(b) This section re-enacts, with verbal alterations, the provisions of 10 and 11 Vict. c. 51, sec. 1, which took effect from and after 1st October 1847.

Its object is to abolish the preliminary procedure formerly required to obtain a Crown writ, as to which see Juridical Styles, 3d edition, vol. i., p. 459.

(c) By the interpretation clause (section 3, paragraph 5), *ante*, p. 6, the words "Crown writ" extend to and include ail charters, precepts, and writs from Her Majesty and from the Prince. But under section 4 of the Conveyancing Act the only Crown writs still competent are those mentioned in note (a) *supra*.

(d) A signature was a warrant prepared and endorsed by a Writer to the Signet authorising a charter to be made and passed under the Seal appointed by the Treaty of Union to be kept and used in Scotland in place of the Great Seal. It required to be presented to and approved by the Barons of Exchequer as the commissioners of the Queen or Prince. When so approved of, it was stamped with the royal sign-manual or signature—whence the name of the writ. It was practically a draft of the charter required from the Crown or Prince. See Bell's Lectures on Conveyancing, 1st edition, p. 704, and Juridical Styles, 3d edition, vol. i., p. 461.

(e) A precept was a signet-writ in Latin desiring the keeper of the Seal to issue a charter in terms of the signature. When it had passed the Signet it was the warrant of the Director of Chancery to make out the charter. See Juridical Styles, 3d edition, vol. i., p. 474.

(f) Viz., in the sections immediately following.

64. *Crown Writs to be obtained by lodging a Draft thereof and Note along with the Title Deeds* (a).—Any person seeking to obtain a Crown writ (b) shall lodge or cause to be lodged in the office of the presenter of signatures (c) a draft of the proposed writ, as prepared by his agent, being a Writer to the Signet (d), whose signature shall be endorsed thereon, together with a short note, in the form, or as nearly as may be (e) in the form of Schedule (S.) hereto annexed, praying for a Crown writ (b) in terms of the said draft; and the date of lodging (f) such note shall be marked thereon by the presenter of signatures (c) or his clerk (g); and along with such note and draft there shall be lodged

the last Crown writ (*b*) and retour or decree of service of the lands, and all the title deeds of the lands subsequent thereto, together with evidence of the valued rent when necessary, and an inventory and brief of the titles, according to the practice heretofore in use (*h*).

(*a*) This section merely re-enacts, with verbal alterations, the provisions of 10 and 11 Vict. c. 51, sec. 2, which took effect from and after 1st October 1847.

Its object is to substitute a new procedure in place of that abolished by the preceding section.

(*b*) Including any charter, precept, or writ from Her Majesty or the Prince. See interpretation clause (section 3, paragraph 5), *ante*, p. 6. But under section 4 of the Conveyancing Act the only Crown writs now competent are those mentioned in note (*a*) to section 63, *ante*, p. 145.

(*c*) For the words "presenter of signatures" substitute the words "Sheriff of Chancery," section 57 of the Conveyancing Act having abolished the office of presenter of signatures, and directed the duties of the office, so far as still necessary, to be discharged by the Sheriff of Chancery.

The presenter of signatures was so called because it was his duty to present signatures to the Barons of Exchequer for their revisal. See note (*d*) *ante*, p. 146.

(*d*) The agent must still be a Writer to the Signet. The Law Agents Act of 1873 does not abolish this privilege of members of the society of Writers to the Signet.

(*e*) There should be no real deviation from the form prescribed.

(*f*) The lodging of the draft and note is declared by section 89 to be equivalent to the presenting of a signature in Exchequer.

(*g*) For the words "his clerk" substitute the words "Sheriff Clerk of Chancery," section 57 of the Conveyancing Act having abolished the office of clerk to the presenter of signatures, and directed the duties of the office, so far as still necessary, to be discharged by the Sheriff Clerk of Chancery.

(*h*) These are required in order to show the applicant's right to the lands, the conditions of the grant, and the duties payable to the Crown.

As to the rectifications of mistakes in the former titles, see sections 66 and 67, *post*, p. 149 and 150; and as to the procedure where a prior Crown writ or service is withheld or cannot be produced, see section 68.

SCHEDULE (S.)

Note for *A.B.* [*insert name and designation*].

The said *A.B.* humbly prays that a writ [*or charter, or precept, or other deed, as the case may be*] (*a*) may be granted by Her Majesty [*or the Prince and Steward of Scotland, as the case may be*] in terms of the draft herewith lodged and marked as relative hereto.

(Signed) *C.D.* (W.S.), Agent for the said *A.B.*

(*a*) As to the Crown writs that are still competent, see note (*a*) to section 63, *ante*, p. 145.

65. *Draft Crown Writ to be revised* (*a*).—The draft Crown writ (*b*) so lodged shall be forthwith revised by the presenter of signatures (*c*), who shall require the attendance of the agent of the person applying for the writ for the purpose of receiving his explanations; and the presenter of signatures (*c*) shall thereafter proceed with the revision of the said draft, making such alterations and corrections as are necessary; and he shall, after his final revision of such draft, authenticate each page thereof, and the several alterations and corrections thereon, if any, with his initials, and shall mark on such draft that the same has been revised by him, and also the date when such revisal was completed; and the fees on signatures (*d*) payable prior to the first day of *October* 1847 (*e*) to the presenter of signatures shall be chargeable on the draft writ to be lodged and revised as aforesaid, and all other fees payable prior to that date to the officers of Exchequer on signature shall cease and determine (*f*).

(*a*) This section merely re-enacts, with verbal alterations, the provisions of 10 and 11 Vict. c. 51, sec. 3, which took effect from and after 1st October 1847.

Its object is to provide for a revisal, on behalf of the Crown, of the draft prepared by the applicant's agent.

(*b*) The words Crown writ include any charter, precept, or writ from Her Majesty or the Prince; see interpretation clause (section 3,

paragraph 5), *ante*, p. 6. But under section 4 of the Conveyancing Act the only Crown writs now competent are those mentioned in note (a) to section 63, *ante*, p. 145.

(c) For the words "presenter of signatures" substitute the words "Sheriff of Chancery," section 57 of the Conveyancing Act having abolished the office of presenter of signatures, and directed the duties of the office, so far as still necessary, to be discharged by the Sheriff of Chancery.

(d) As to the nature of signatures, see note (d), *ante*, p. 146.

(e) *Viz.*, the date of the commencement of the Crown Charters Act of 1847 (10 and 11 Vict. c. 51), the provisions of which are consolidated by the present Act.

(f) As to the fees now payable, see sections 70 and 91.

66. *Rectification of mistakes in former Titles (a).*—If it shall appear that any mistake has occurred in the terms of the last Crown writ (b) or retour or decree of service to the prejudice of the Crown (c), the person applying for the writ shall further, on requisition made to him or his agent to that effect, by order of the presenter of signatures (d), lodge the prior title deeds of the said lands, and any other title deeds of and concerning the same, in so far as such title deeds may be in his possession or at his command, and in so far as the same may be necessary for the due revisal of the said draft on behalf of the Crown (c), and for the rectification of such mistake, which may be rectified accordingly; and, on the other hand, if the vassal shall allege any mistake to have occurred in the terms of the last Crown writ (b) or retour or decree of service to his prejudice, the person applying for the writ shall be entitled, without such requisition, to lodge a note explaining the alleged mistake, and produce the prior titles of the said lands, and any other title deeds or other deeds of and concerning the same, in so far as these may be necessary for the due revisal of the said draft and the rectification of such mistake, which may be rectified accordingly; but no such rectification shall in either case be allowed, nor the draft be held as

finally revised or authenticated as such, until the same shall have been reported by the presenter of signatures (*d*) to and approved of by the Lord Ordinary in Exchequer causes appointed in terms of an Act passed in the nineteenth and twentieth years of the reign of Her Majesty, chapter 56, for constituting the Court of Session the Court of Exchequer in *Scotland* (*e*).

(*a*) This section merely re-enacts, with slight alterations, the provisions of 10 and 11 Vict. c. 51, sec. 4, which took effect from and after 1st October 1847.

Its object is to provide a mode for preventing mistakes in prior Crown writs or services being continued in future writs.

(*b*) Including any charter, precept, or writ from Her Majesty or the Prince ; see interpretation clause (section 3, paragraph 5), *ante*, p. 6. But under section 4 of the Conveyancing Act the only Crown writs now competent are those mentioned in note (*a*) to section 63, *ante*, p. 145.

(*c*) Including Her Majesty and the Prince ; see interpretation clause (section 3, paragraph 5), *ante*, p. 6.

(*d*) For the words "presenter of signatures" substitute the words "Sheriff of Chancery," section 57 of the Conveyancing Act having abolished the office of presenter of signatures, and directed the duties of the office, so far as still necessary, to be discharged by the Sheriff of Chancery.

(*e*) Viz., 19 and 20 Vict. c. 56, sec. 2, under which one of the Lords Ordinary in the Outer House of the Court of Session is appointed Lord Ordinary in Exchequer causes.

Under the corresponding section of the Act of 1847, the duties here referred to were discharged by the Judges of the Court of Exchequer ; but they were transferred to the Lord Ordinary in Exchequer causes by 19 and 20 Vict. c. 56, sec. 18.

67. *Intimation of proposed rectification to be made to Solicitor for Commissioners of Woods and Forests* (*a*).—In every case where the draft of any Crown writ (*b*) shall be laid before the Lord Ordinary in Exchequer causes, as before provided for (*c*), intimation thereof and of the relative report by the presenter of signatures (*d*), or note, as the case may be, shall be made by the agent applying for the writ to the solicitor in *Scot-*

land for the Commissioners of Her Majesty's Woods, Forests, and Land Revenues, and the Lord Advocate shall be entitled to appear in name and on behalf of the Crown, and on behalf of the said Commissioners, or either of them, in all future proceedings relating to the said Crown writ (*b*); and the Lord Ordinary, before finally approving of any such draft writ, shall be satisfied that one calendar month's previous notice in writing of such draft having been laid before him has been given to the said solicitor, accompanied by a copy of the said draft writ, and of the report by the presenter of signatures (*d*), or note, as the case may be.

(*a*) This section is a new enactment, thus taking effect from and after 1st December 1868.

Its object is to prevent such alterations being made in the writ as might prejudicially affect the rights of the Crown as superior or as proprietor of salmon fishings, &c.

Page 151, line 1
of note (*a*).
For "1st" read
"31st."

(*b*) Including any charter, precept, or writ from Her Majesty or the Prince; see interpretation clause (section 3, sub-section 5), *ante* p. 6. But under section 4 of the Conveyancing Act the only Crown writs now competent are those mentioned in note (*a*) to section 63, *ante* p. 145.

(*c*) Viz., in section 66, *ante*, p. 149.

(*d*) For the words "presenter of signatures" substitute the words "Sheriff of Chancery," section 57 of the Conveyancing Act having abolished the office of presenter of signatures, and directed the duties of the office, so far as still necessary, to be discharged by the Sheriff of Chancery.

68. *Presenter of Signatures* (*c*), &c. may refer to copy of Writ when withheld (*a*).—When the last Crown writ (*b*) or retour or decree of service shall be withheld by the person applying as aforesaid, or cannot be so lodged from being in the possession of the proprietor of other lands therein contained, or from any other good cause, it shall be competent for the presenter of signatures (*c*), or for the person applying as aforesaid, to refer to the copy thereof engrossed in the register of the Great Seal, or in the register of retours or record

of services, and to procure exhibition thereof as evidence of the terms of such last Crown writ (*b*) or retour or decree of service; and the Lord Clerk Register is hereby authorised and required to make such regulation as will enable the exhibition thereof to be obtained for the purpose aforesaid, upon the joint application of the person so applying and of the presenter of signatures (*c*).

(*a*) This section merely re-enacts, with a slight verbal alteration, the provisions of 10 and 11 Vict. c. 51, sec. 5, which took effect from and after 1st October 1847.

Its object is to allow a copy instead of the principal prior writ to be referred to, where the principal cannot be got.

(*b*) Including any charter, precept, or writ from Her Majesty or the Prince; see interpretation clause (section 3, paragraph 5), *ante*, p. 6. But under section 4 of the Conveyancing Act the only Crown writs now competent are those mentioned in note (*a*) to section 63, *ante*, p. 145.

(*c*) For the words "presenter of signatures" substitute the words "Sheriff of Chancery," section 57 of the Conveyancing Act having abolished the office of presenter of signatures, and directed the duties of the office, so far as still necessary, to be discharged by the Sheriff of Chancery.

69. *Amount of Crown Duties to be fixed* (*a*).—The presenter of signatures (*b*) shall also, with the aid of the auditor of Exchequer, ascertain and fix the amount of composition or other duties due and payable to the Crown (*c*) on granting such writ, and the amount of the same shall be marked on the said draft, and certified by the signatures of the said auditor of Exchequer and of the presenter of signatures; and in ascertaining and fixing the amount of such composition and other duties payable to the Crown (*c*) there shall be no charge added for the expense of collecting the same, any law or practice to the contrary notwithstanding.

(*a*) This section merely re-enacts, with a slight verbal alteration, the provisions of 10 and 11 Vict. c. 51, sec. 6, which took effect from and after 1st October 1847.

Its object is to provide for settling the amount of casualties or other duties payable to the Crown. The abolition of charters by progress renders this section almost entirely inoperative as regards the time and mode of settlement.

In feus created before 1st October 1874, however, the amount of the casualties is still the same as formerly, viz. (with a few exceptions) in the case of an heir ten merks, and in the case of a singular successor one sixth part of the valued rent, which must be instructed either by the valuation books in Exchequer or by a certificate of two Commissioners and the Clerk of Supply of the county in which the lands lie. See *Juridical Styles*, 4th ed., vol. i., p. 340.

(b) For the words "presenter of signatures," substitute the words "Sheriff of Chancery," section 57 of the Conveyancing Act having abolished the office of presenter of signatures, and directed the duties of the office, so far as still necessary, to be discharged by the Sheriff of Chancery.

(c) Including any charter, precept, or writ from Her Majesty or the Prince; see interpretation clause (section 3, paragraph 5), *ante*, p. 6. But under section 4 of the Conveyancing Act the only Crown writs now competent are those mentioned in note (a) to section 63, *ante*, p. 145.

70. Clerk's Fees (a).—The person applying for such Crown writ (b) shall be bound to pay to the clerk of the presenter of signatures (c) the fees to be fixed in manner herein-after provided (d), which fees shall be paid over by such clerk to the Director of Chancery, who shall be accountable therefor.

(a) This section merely re-enacts, with a verbal alteration, the provisions of 10 and 11 Vict. c. 51, sec. 6, which took effect from and after 1st October 1847.

(b) Including any charter, precept, or writ from Her Majesty or the Prince; see interpretation clause (section 3, paragraph 5), *ante*, p. 6. But under section 4 of the Conveyancing Act the only Crown writs now competent are those mentioned in note (a) to section 63, *ante*, p. 145.

(c) For the words "clerk to the presenter of signatures" substitute the words "Sheriff Clerk of Chancery," section 57 of the Conveyancing Act having abolished the office of clerk to the presenter of signatures, and directed the duties of the office, so far as still necessary, to be discharged by the Sheriff Clerk of Chancery.

(d) Viz., by section 91, *post*, p. 180.

71. *Copy of revised Draft to be furnished to the party (a).*—Such revised draft (*b*) shall, so long as it is retained in the office of the presenter of signatures (*c*), be there open to the inspection of the party applying for the Crown writ (*d*), or his agent, and a copy thereof shall be furnished on demand on payment of the fees to be fixed as herein-after directed (*e*).

(*a*) This section merely re-enacts, with a verbal alteration, the provisions of 10 and 11 Vict. c. 51, sec. 8, which took effect from and after 1st October 1847.

Its object is to provide the applicant for the writ with an opportunity of seeing the revisal made on behalf of the Crown.

(*b*) Viz., under section 65, *ante*, p. 148.

(*c*) For the words “presenter of signatures” substitute the words “Sheriff of Chancery,” section 57 of the Conveyancing Act having abolished the office of presenter of signatures, and directed the duties of the office, so far as still necessary, to be discharged by the Sheriff-Clerk of Chancery.

(*d*) Viz., the writ so drafted.

(*e*) Viz., by section 91, *post*, p. 180.

72. *If no Objections, the revised Draft to be attested, and the Crown Writ prepared (a).*—Where no objections shall be stated to the draft as so revised, a docquet shall be put thereon certifying that the same is approved, which docquet shall be signed by the agent applying for the Crown writ (*b*) and by the presenter of signatures (*c*), and the date of signing the same thereon set forth; and such draft, so docquetted, shall, without being given up to the party applying for the said writ or his agent, be officially transmitted by the presenter of signatures (*c*) to the office of the Director of Chancery, and where such writ is to be engrossed on any deed or conveyance, such deed or conveyance shall be transmitted along with said draft (*d*), and such draft shall form a valid and sufficient warrant for the immediate preparation of the writ in Chancery in terms of such draft.

(a) This section merely re-enacts, with an addition referred to in note (d) *infra*, the provisions of 10 and 11 Vict. c. 51, sec. 9, which took effect from and after 1st October 1847.

Its object is to provide for the preparation of the Crown writ in terms of the revised draft.

(b) *Viz.*, the writ so drafted.

(c) For the words "presenter of signatures," substitute the words "Sheriff of Chancery," section 57 of the Conveyancing Act having abolished the office of presenter of signatures, and directed the duties of the office, so far as still necessary, to be discharged by the Sheriff of Chancery.

(d) This clause is an addition made by the present Act, rendered necessary by section 78, which directs writs engrossed on conveyances to be signed by the Director of Chancery instead of the presenter of signatures.

The writs referred to are writs of confirmation and resignation, which are now, under section 4 of the Conveyancing Act, useless and incompetent.

73. *Crown Writs may be applied for at any time* (a).—It shall be competent to apply for any Crown writ (b) in manner before directed (c), and to revise the draft of the same, and in the event of the same being docketed as revised and approved in manner aforesaid (d) to prepare and deliver the writ as herein-after directed (e) at any period of the year, and notwithstanding that it shall not then be term time of the Court of Session acting as the Court of Exchequer in *Scotland* under the said Act passed in the nineteenth and twentieth years of the reign of Her present Majesty, chapter 56 (f).

(a) This section merely re-enacts, with verbal alterations, the provisions of 10 and 11 Vict. c. 51, sec. 10, which took effect from and after 1st October 1847.

Its object is to enable Crown writs to be obtained during the vacation of the Court of Session.

(b) Including any charter, precept, or writ from Her Majesty or the Prince. See interpretation clause (section 3, paragraph 5), *ante*, p. 6. But under section 4 of the Conveyancing Act the only Crown writs now competent are those mentioned in note (a) to section 63, *ante*, p. 145.

(c) Viz., in section 64, *ante*, p. 146.

(d) Viz., in sections 65 and 66, *ante*, pp. 148 and 149.

(e) Viz., in section 78, *post*, p. 160.

(f) Section 3 of the Act here mentioned provides that “it shall be competent to the Lord Ordinary in Exchequer causes at any time, as well in vacation or recess as during the sittings of the Court of Session, and on any day or days of the year, whether sederunt days of the Court of Session or not, to entertain and dispose of all matters of a summary nature, or which may appear to the Lord Ordinary to require despatch, being within his competency under this Act, and also to try any cause under this Act, and to pronounce judgment therein, and in case of the absence or inability of the Lord Ordinary, any duties devolving on him under this Act may, during such absence or inability, be performed by any other Lord Ordinary of the Court of Session acting in his room and stead.”

74. *Objections, if any, to Draft Crown Writ to be by a Note (a).*—It shall be lawful for the person applying for the Crown writ (*b*), if dissatisfied with the draft revised as aforesaid (*c*), to state objections thereto or against the amount of duties and composition thereon marked as payable (*d*); and such objections shall be set forth in a short written note of objections, without argument, to be lodged in the office of the presenter of signatures (*e*), subscribed by the agent of such person; and the date of lodging such note of objections shall be marked thereon by the presenter of signatures or his clerk (*f*).

(a) This section merely re-enacts, with a verbal alteration, the provisions of 10 and 11 Vict. c. 51, sec. 11, which took effect from and after 1st October 1847.

Its object is to provide a mode of objecting to the proceedings of the Crown officials.

(b) Including any charter, precept, or writ from Her Majesty or the Prince; see interpretation clause (section 3, paragraph 5), *ante*, p. 6. But under section 4 of the Conveyancing Act the only Crown writs still competent are those mentioned in note (a) to section 63, *ante*, p. 145.

(c) Viz., in section 65, *ante*, p. 148.

(d) Under section 69, *ante*, p. 152.

(e) For the words "presenter of signatures" substitute the words "Sheriff of Chancery," section 57 of the Conveyancing Act having abolished the office of presenter of signatures, and directed the duties of the office, so far as still necessary, to be discharged by the Sheriff of Chancery, and the duties of the clerk of the presenter of signatures to be discharged by the Sheriff Clerk of Chancery.

(f) For the words "presenter of signatures or his clerk" substitute the words "Sheriff of Chancery or the Sheriff Clerk of Chancery;" see the immediately preceding note (e).

75. *Objections, how to be disposed of (a).*—Where any note of objections shall be so lodged (b), such note shall, together with the whole other proceedings, be laid before the said Lord Ordinary in Exchequer causes (c), and the said Lord Ordinary shall hear the person so objecting, by himself, his counsel or his agent, being a Writer to the Signet (d), and shall also hear any report or statement by the presenter of signatures (e); and wherever it shall appear to the said Lord Ordinary that the said objections should to any extent receive effect he shall cause such alterations and corrections as shall appear to him proper, either with reference to the terms of the said draft, or to the amount of duties or other payments marked thereon as payable, to be made on such draft, or to be expressed in a separate paper marked as relative thereto, and shall authenticate such draft and relative paper with his signature; and the said Lord Ordinary shall at the same time pronounce a judgment or deliverance, to be written on the note of objections, appointing the writ, as so altered and corrected, to be prepared and executed; and the judgment or deliverance so pronounced shall form a valid and sufficient warrant for the preparation in Chancery of the writ as altered and corrected.

(a) This section merely re-enacts, with an alteration necessitated by the substitution of the Lord Ordinary for the judges of Exchequer, the provisions of 10 and 11 Vict. c. 51, sec. 12, which took effect from and after 1st October 1847.

Its object is to provide a mode of obtaining a judicial deliverance on any objections stated to the proceedings of the Crown officials.

(b) Viz., under section 74, *ante*, p. 156.

(c) See sections 66 and 73, *ante*, pp. 149 and 155.

(d) Every enrolled law-agent is now entitled to practise in any court of law in Scotland; see the Law Agents Act of 1873 (36 and 37 Vict. c. 63, sec. 2). But only a Writer to the Signet can prepare the draft of a Crown writ; see section 64, *ante*, p. 146.

(e) For the words "presenter of signatures" substitute the words "Sheriff of Chancery," section 57 of the Conveyancing Act having abolished the office of presenter of signatures, and directed the duties of the office, so far as still necessary, to be discharged by the Sheriff of Chancery.

76. Procedure if Objections repelled (a).—Wherever the said Lord Ordinary (b) shall be of opinion that the said objections should not to any extent receive effect, he shall pronounce a judgment, to be written on the said note of objections, repelling the said objections; and the judgment or deliverance so pronounced shall form a valid and sufficient warrant for the preparation in Chancery of the writ as revised by the presenter of signatures (c) in manner before directed (d).

(a) This section merely re-enacts, with an alteration necessitated by the substitution of the Lord Ordinary for the judges of Exchequer, the provisions of 10 and 11 Vict. c. 51, sec. 13, which took effect from and after 1st October 1847.

Its object is to regulate the procedure in the case of the objections being repelled.

(b) Viz., the Lord Ordinary in Exchequer causes; see sections 66 and 73, *ante*, pp. 149 and 155.

(c) For the words "presenter of signatures" substitute the words "Sheriff of Chancery," section 57 of the Conveyancing Act having abolished the office of presenter of signatures, and directed the duties of the office, so far as still necessary, to be discharged by the Sheriff of Chancery.

(d) Viz., in sections 65 and 72, *ante*, pp. 148 and 154.

77. Refusal to revise, how to be complained of (a).—Wherever the presenter of signatures (b) shall be of opinion

that the person applying for the Crown writ (c) has not produced a title sufficient to show that he has right to obtain the same, the presenter of signatures (b) shall mark on the said draft that the same is refused for want of sufficient production of titles, adding thereto his signature and the date of affixing the same; and his clerk (d) shall intimate such refusal to the agent of the said person, and shall on demand return the draft to such agent; and in every such case it shall be competent for the person who shall have applied for the writ to bring such refusal under review of the said Lord Ordinary (e) by a note of objections lodged in manner aforesaid; and the said Lord Ordinary shall, after considering such note and hearing parties thereon in manner aforesaid, sustain or repel the objections, or pronounce such judgment or deliverance thereon as shall be just; and if the said Lord Ordinary shall be of opinion that a sufficient title has been shown to authorize the writ being granted, he shall in that case remit to the presenter of signatures (b) to proceed with the revisal of the draft in manner before mentioned (f).

(a) This section merely re-enacts, with some verbal alterations, and the substitution of the Lord Ordinary for the judges of Exchequer, the provisions of 10 and 11 Vict. c. 51, sec. 14, which took effect from and after 1st October 1847.

Its object is to provide a mode of bringing under review a refusal of a Crown writ on the ground of want of sufficient production of titles.

(b) For the words "presenter of signatures" substitute the words "Sheriff of Chancery," section 57 of the Conveyancing Act having abolished the office of presenter of signatures, and directed the duties of the office, so far as still necessary, to be discharged by the Sheriff of Chancery.

(c) Including any charter, precept, or writ from Her Majesty or the Prince. See interpretation clause (section 3, paragraph 5), *ante*, p. 6. But under section 4 of the Conveyancing Act the only Crown writs still competent are those mentioned in note (a) to section 163, *ante*, 145.

(d) For the words "his clerk" substitute the words "Sheriff Clerk of Chancery," section 57 of the Conveyancing Act having

abolished the office of clerk to the presenter of signatures, and directed the duties of the office to be performed by the Sheriff Clerk of Chancery.

(e) Viz., the Lord Ordinary in Exchequer causes. See sections 66 and 73, *ante*, pp. 149 and 155.

(f) Viz., in section 66, *ante*, p. 149.

78. *Crown writ as revised to be engrossed and delivered (a).*—As soon as the draft Crown writ (b) shall have been docquetted as revised and approved in manner before provided (c), or, in case of objections being stated, as soon as the same shall have been disposed of by the said Lord Ordinary (d) in manner before directed (e), the said draft shall be officially transmitted by the presenter of signatures (f) to the office of the Director of Chancery; and where such writ is to be engrossed on any deed or conveyance, such deed or conveyance shall be transmitted along with said draft (g), and immediately thereafter the writ shall be engrossed in the office of the Director of Chancery in terms of the draft as finally adjusted, signed, and officially transmitted as aforesaid, and shall be signed by the Director of Chancery or his depute or substitute (h); and it shall not be necessary to have the seal appointed by the Treaty of Union to be kept and used in *Scotland* in place of the Great Seal thereof formerly in use affixed to any writs from Her Majesty, or the seal of the Prince if the writs be of lands holden of the Prince, and a separate seal be then in use for such writs, affixed to any writs from the Prince, unless the receivers of such writs shall require the appropriate seal to be affixed (i); and when the appropriate seal is so required and affixed, the fact shall be stated at the conclusion of the writ, and the date on which the seal is actually appended stated; and all Crown writs (b) shall be in all respects as valid and effectual without the seal as if the same had been appended thereto; and the writ when signed, or, if required, signed and sealed, as the case may be, shall be recorded in Chancery in manner hereafter provided (k), and shall

be thereafter delivered to the person applying for the same, or his agent, in like manner in all respects, and on payment of the same fees and charges as at present used and observed and payable, and the date of signing, or of sealing when the seal is appended, shall in all cases be held and expressed to be the date of the writ : Provided always, that before the writ shall be so delivered payment shall be made to the officers who are or may be entitled to receive the same of the amount of duties and compositions payable to Her Majesty or the Prince, ascertained and fixed as aforesaid (l) ; and a record of the amount of duties payable to Her Majesty or the Prince shall be kept in Chancery, so as to form a charge against the officer or other person appointed to receive the same.

(a) This section re-enacts, with verbal alterations and the substitution of the Lord Ordinary for the judges of Exchequer, the provisions of 10 and 11 Vict. c. 51, sec. 15, which took effect from and after 1st October 1847 ; and also (as regards dispensing with the affixing of the seals) the provisions of 21 and 22 Vict. c. 76, sec. 32, which took effect from and after 1st October 1858.

The object of this section is to regulate the engrossment, execution, and delivery of Crown writs.

(b) Including any charter, precept, or writ from Her Majesty or the Prince ; see interpretation clause (section 3, paragraph 5), *ante*, p. 6. But under section 4 of the Conveyancing Act the only Crown writs still competent are those mentioned in note (a) to section 63, *ante*, p. 145.

(c) Viz., in section 72, *ante*, p. 154.

(d) Viz., the Lord Ordinary in Exchequer causes ; see sections 66 and 73, *ante*, pp. 149 and 155.

(e) Viz., in sections 75, 76, and 77, *ante*, p. 157 *et seq.*

(f) For the words "presenter of signatures" substitute the words "Sheriff of Chancery," section 57 of the Conveyancing Act having abolished the office of presenter of signatures, and directed the duties of the office, so far as still necessary, to be discharged by the Sheriff of Chancery.

(g) The writs here referred to as engrossed on deeds or conveyances were writs of confirmation and writs of resignation, which are now incompetent under section 4 of the Conveyancing Act.

(h) Under the Act of 1858 writs engrossed upon conveyances were signed by the presenter of signatures. But under the present section all Crown writs without exception must be signed by the Director of Chancery or his deputy or substitute.

(i) As to these seals, see *Juridical Styles*, 3d ed., vol. i., p. 459. The Act of 1847 directed the appropriate seal to be affixed; and accordingly Crown writs thereafter granted contained not only as formerly the order to affix the seal, but also the statement that the seal had been affixed. The affixing of the seal was for the first time dispensed with by the Act of 1858; see note (a) *supra*.

(k) *Viz.*, in section 87, *post*, p. 176.

(l) *Viz.*, in section 69, *ante*, p. 152.

79. Crown Writs to be valid (a).—The engrossed Crown writ (b), signed, or signed and sealed, recorded and delivered as aforesaid, shall be in all respects a warrant for infeftment (c) in the lands described or referred to in the said writ, as valid and effectual as any Crown writ (b) of the same description hitherto in use to be granted, and notwithstanding that the same has not followed on any signature presented and passed in Exchequer or precept directed thereon, any law or usage heretofore existing to the contrary notwithstanding (d).

(a) This section merely re-enacts, with verbal alterations, the provisions of 10 and 11 Vict. c. 51, sec. 16, which took effect from and after 1st October 1847.

Its object is to render the new form of Crown writ equivalent to the old.

(b) Including any charter, precept, or writ from Her Majesty or the Prince; see interpretation clause (section 3, paragraph 5), *ante*, p. 6. But under section 4 of the Conveyancing Act the only Crown writs still competent are those mentioned in note (a) to section 63, *ante*, p. 145.

(c) It may thus be recorded, with a warrant of registration in terms of section 15, *ante*, p. 46.

(d) As to the previous law and usage, see section 63, *ante*, p. 145.

80. Ceremony of Resignation abolished (a).—Where a Crown charter or Crown writ (b) of resignation is applied for it shall not be necessary to go through any form or ceremony of resignation, but in all cases resignation shall be held to be duly made and completed in terms of the procuratory or clause of resignation, which forms the warrant for resignation, by the ingiving of the note applying for the charter or writ as aforesaid (c), and as of the date of such ingiving; and every such charter or writ of resignation shall be as valid and effectual as any Crown charter or Crown writ of resignation heretofore granted, any law or usage to the contrary notwithstanding.

(a) This section re-enacts, with slight alterations, the provisions of 10 and 11 Vict. c. 51, sec. 17, which took effect from and after 1st October 1847.

Its object is to render unnecessary the ceremony of resignation which was required in the case of entry with the Crown by resignation prior to 1847.

This section is now superseded by the provisions of the Conveyancing Act (section 4) rendering charters by progress incompetent, and thus abolishing entry by resignation.

(b) Writs of resignation were first introduced by 21 and 22 Vict. c. 76, sec. 8. See section 81 of the present Act.

(c) Viz., in section 64, *ante*, p. 146.

81. Investiture by Resignation from the Crown (a).—Where lands are held of the Crown (b), and a new investiture by resignation shall be required, it shall be competent for the person in right of the deed or conveyance which is the warrant for resignation, to apply to the presenter of signatures for a Crown charter of resignation, or a Crown writ of resignation, in or as nearly as may be in the forms herein-after respectively provided (c), and such Crown writ of resignation shall be engrossed on the said deed or conveyance, and it shall be competent to record in the appropriate register of sasines such deed or conveyance, with the writ engrossed thereon, and warrant of registration also, in the form or as nearly as may be in the form No. 1. of Schedule (H.) hereto annexed (d); and the same being so recorded shall have the same legal force and effect in all respects as if a Crown charter of resignation had been granted, and such charter had been followed by an instrument of sasine expedite in favour of the party on whose behalf such deed of conveyance and writ and warrant are presented for registration, and so recorded at the date of recording such deed or conveyance and writ and warrant: Provided always, that the recording of such deed or conveyance along with such writ and warrant shall not have the effect of an instrument of sasine following on such deed or conveyance (e).

(a) This section re-enacts, with verbal alterations, the provisions of 10 and 11 Vict. c. 51, sec. 24 (authorising the use of a short

form of charter of resignation), which took effect from and after 1st October 1847, and the provisions of 21 and 22 Vict. c. 76, sec. 8 (authorising the writs of resignation and the recording of charters or of conveyances with writs thereon), which took effect from and after 1st October 1858.

The object of the section was to provide a simple mode of obtaining from the Crown or Prince an entry by resignation.

This section is impliedly repealed from and after 1st October 1874 by the provisions of the Conveyancing Act (section 4) rendering charters by progress incompetent, and thus abolishing entry by resignation.

(b) Including Her Majesty and the Prince; see interpretation clause (section 3, paragraph 5), *ante*, p. 6.

(c) Viz., in section 83, *post*, p. 165.

(d) Schedule (H.) is printed *ante*, p. 49.

(e) That is to say, shall not have the effect of constituting two infeftments, one on the *a me* and the other on the *de me* precept of sasine implied in a conveyance with an alternative holding, and so rendering consolidation necessary.

82. *Investiture by Confirmation from the Crown (a).*—Where lands are held of the Crown (b), and a confirmation of any deed or conveyance recorded in the appropriate register of sasines shall be required, it shall be competent for the person in right of such deed or conveyance to apply to the presenter of signatures for a Crown charter of confirmation, or a Crown writ of confirmation, in or as nearly as may be in the forms herein-after respectively provided (c), and such Crown writ of confirmation shall be engrossed on the said deed or conveyance, and shall have the same legal force and effect as a Crown charter of confirmation of such deed or conveyance.

(a) This section re-enacts, with verbal alterations, the provisions of 10 and 11 Vict. c. 76, sec. 24 (authorising the use of a short form of charter of confirmation), which took effect from and after 1st October 1847, and the provisions of 21 and 22 Vict. c. 76, sec. 6 (authorising the use of writs of confirmation and the recording of charters, or of conveyances with writs thereon), which took effect from and after 1st October 1858.

The object of the section is to provide a simple mode of obtaining from the Crown or Prince an entry by confirmation.

The section is impliedly repealed from and after 1st October 1874 by the provisions of the Conveyancing Act (section 4) rendering charters by progress incompetent, and thus abolishing entry by confirmation.

(b) Including Her Majesty and the Prince; see interpretation clause (section 3, paragraph 5), *ante*, p. 6.

(c) *Viz.*, in section 83, following.

83. *Crown Writs and Crown Charters may be in the forms given in Schedule (T.) (a).*—Crown writs and Crown charters of resignation may be respectively in the forms or as nearly as may be in the forms of Nos. 1. and 2. of Schedule (T.) hereto annexed; and Crown writs and Crown charters of confirmation may be respectively in the forms or as nearly as may be in the forms of Nos. 3. and 4. of said Schedule (T.); and Crown writs and Crown charters of any other denomination or nature (b), except Crown precepts or Crown writs of *clare constat* (c), may be in forms as nearly approaching as may be to the examples given in the said Schedule (T.), the necessary alterations being made as the denomination or nature of the particular writ or charter may require; and all Crown writs and Crown charters, including Crown precepts and Crown writs of *clare constat*, when granted in or as nearly as may be in any of the forms provided by this Act, shall have the same force and legal effect in all respects as if the same had been granted in any corresponding forms heretofore in use or competent, and shall be read and construed as largely and beneficially in all respects for the holders thereof as if the same had been expressed in and had contained the whole terms and words which are now used, or were used prior to the 1st day of *October 1847* (d), in granting such Crown writs or charters: Provided, that when the lands to which the deed or conveyance on which any Crown writ shall be engrossed are held under a deed of entail, or under any real burdens or conditions or provisions or limitations whatsoever appointed to be fully inserted in the investitures of such lands, it shall not be necessary in such writ to insert or refer to the destination of heirs, the conditions, provisions, and prohibitory, irritant, and resolute clauses, or clause authorizing registration in the register of *taillies* contained in such deed of entail, provided the same are inserted at full length in such deed or conveyance or are referred to therein in manner provided by the 9th section of this Act, or to insert or refer to such real burdens or conditions or provisions or limitations, provided the same are inserted at length in such deed or conveyance, or are referred to therein in manner provided by the 10th section of this Act (e).

(a) This section re-enacts, with slight alterations, the provisions

of 10 and 11 Vict. c. 51, sec. 24 (providing forms of Crown charters), which took effect from and after 1st October 1847, and the provisions of 21 and 22 Vict. c. 76, secs. 6 and 8 (providing forms of Crown writs), which took effect from and after 1st October 1858.

The object of the section is merely to provide short forms of Crown charters and writs.

The words printed in small type are impliedly repealed from and after 1st October 1874 by the provisions of the Conveyancing Act (section 4) rendering charters by progress incompetent.

(b) The only Crown charters now competent, besides precepts or writs of clare constat, are original charters and charters of novodamus; see note (a) to section 63, *ante*, p. 145.

(c) Section 84, *post*, p. 168, provides the forms applicable to Crown precepts or Crown writs of clare constat.

(d) *Viz.*, the date from and after which the Crown Charters Act (10 and 11 Vict. c. 51) took effect.

(e) This proviso is impliedly repealed from and after 1st October 1874, as the writs that could be engrossed on a conveyance, *viz.*, writs of confirmation and writs of resignation, are now incompetent under section 4 of the Conveyancing Act.

SCHEDULE (T.)

No. 1.

Crown Writ of Resignation (a).

Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.—We, in respect of the within clause [or procuratory] of resignation, dispone to *C.D.* the lands contained in this disposition [or other deed or conveyance, as the case may be] in his favour [or in favour of *A.B.*, or otherwise, as the case may be, specifying shortly the connecting title], as vassal in room and place of *E.F.* [here name and design last vassal in the lands], entered by [here specify the Crown charter, or other Crown writ by which the last vassal was entered, and instrument thereon, if any, and date of registration in the register of sasines if recorded, and of recording in the register of Crown writs], but only in so far as consistent with the [here specify, or refer to if previously specified, a Crown charter or other Crown writ containing the tenendas and reddendo, &c.], and with our own rights. [If the reddendo is to be different from that in the Crown charter or other Crown writ specified or referred to, or if the vassal should desire, specify the reddendo here.] Given at Edinburgh, the day of in the year .

[Signed by the Director of Chancery, or his depute or substitute.]

No. 2.

Crown Charter of Resignation (a).

Victoria, &c. We do hereby give, grant, and dispose, and for ever confirm to A.B. and his heirs and assignees whomsoever [*or in case there be a substitution of heirs, here insert it at full length, or refer to it as in Schedule (C.)*], heritably and irredeemably, all and whole [*here insert or refer as in Schedule (E.) or in Schedule (G.), as the case may be, to the lands. In case there be any conditions of entail, or any real burdens, &c., proper to be inserted or referred to, insert them here immediately after the description of the lands, or refer to them as in Schedule (C.) or Schedule (D.), as the case may be*], which lands and others formerly belonged to C.D., holden by him immediately of the Crown in terms of [*here state briefly the investiture of the last entered vassal, whether a Crown precept and sasine, or Crown charter and sasine, or other Crown writ, as recorded in the register of sasines, or otherwise, as the case may be*], and were at the date of applying for these presents resigned by him into our hands by virtue of a procuratory [*or clause*] of resignation contained in a disposition [*or other deed or conveyance, as the case may be*] of the said lands and others granted by him in favour of the said A.B., dated [*here insert the date*], to be holden, the said lands and others, of us, and our royal successors, in free blench farm for ever, paying therefor a penny Scots yearly of blench duty, if asked only [*or if the lands were held formerly in ward, say here, in free blench as in room of ward, paying therefor a penny Scots yearly, as in room of the ward duties, if asked only, or if held in feu farm, say here, in feu farm, and specify the feu duty and other duties and services, or otherwise, as the case may be*].

In witness whereof, we have ordered the seal now used for the Great Seal of Scotland to be appended hereto of this date [*if the vassal desires the seal to be appended, say here, and the same is accordingly at the request of the said A.B. appended*], at Edinburgh, the day of [*state the day, month, and year*].

[*Signed by the Director of Chancery, or his depute or substitute.*]

No. 3.

Crown Writ of Confirmation (a).

Victoria, &c. We confirm this disposition [*or other deed or conveyance, as the case may be*] in favour of C.D., as vassal in room and place of E.F. [*here name and design last vassal in the lands*], entered by [*here specify the Crown charter or other Crown writ by which the last vassal was entered, and instrument thereon, if any, and date of registration in register of sasines, if recorded, and of recording in the register of Crown writs*], but only in so far as consistent with the [*here specify, or refer to if previously specified, a Crown charter or other Crown writ containing the tenendas and reddendo, &c.*], and with our own rights. [*If the reddendo is to be different from that in the Crown charter or other Crown writ specified or referred to, or, if the vassal should desire, specify the reddendo here*]. Given at Edinburgh, the day of in the year .

[*Signed by the Director of Chancery, or his depute or substitute.*]

No. 4.

Crown Charter of Confirmation (a).

Victoria, &c. We do hereby confirm for ever, to and in favour of *A.B.* and his heirs and assignees whomsoever [or in case there be a substitution of heirs, here insert it at full length, or refer to it as in Schedule (C.)], heritably and irredeemably, all and whole [here insert or refer as in Schedule (E.) or Schedule (G.), as the case may be, to the lands to be confirmed. In case there be any conditions of entail, or any real burdens, &c., proper to be inserted or referred to, insert them here immediately after the description of the lands, or refer to them as in Schedule (C.) or Schedule (D.), as the case may be], and a [here specify the deed or conveyance which is to be confirmed in favour of *A.B.*, and if the same has been recorded with warrant of registration in his favour, add,] with warrant of registration thereon in favour of the said *A.B.*, recorded in the [here describe the register in which the said deed or conveyance is recorded], on the day of , [or of whatever other date the said deed or conveyance or recording thereof may be], in so far as they relate to the lands and others hereby confirmed, to be holden, the said lands and others, of us, &c. [as in No. 2. of this Schedule].

In witness whereof, &c. [as in No. 2. of this Schedule].

GENERAL NOTE TO SCHEDULE (T).—When the writs and charters Nos. 1, 2, 3, and 4 are to be granted by or on behalf of the Prince and Steward of Scotland, they will be in similar form, but will run in name of the “Prince and Steward of Scotland,” without adding His Highness’ other titles; and the lands, instead of being described as holding of Her Majesty and her royal successors, will, where it is necessary by the form of the writ or charter to specify the holding, be described as holding of the “Prince and Steward of Scotland,” and the seal referred to in the testing clause will be the Prince’s seal.

(a) These particular charters and writs are now incompetent; see notes (a) and (b) *ante*, pp. 165 and 166.

84. *Crown Writs or Precepts to Heirs specially served, how to be obtained (a).*—When any person who has obtained himself specially served (b) as heir to a deceased ancestor shall seek to obtain a Crown writ of *clare constat* (c) or precept from Chancery (d) for infesting himself as such heir, he shall, in like manner as before directed (e), lodge or cause to be lodged in the office of the presenter of signatures (f) the retour or decree of his special service, and a draft of the proposed writ or precept prepared by his agent, being a Writer to the Signet, in the form or as nearly as may

be in the forms, as the case may require, of Schedule (U.) Nos. 1. and 2. hereto annexed, together with a note in the terms or to the effect before directed (*e*), and the last Crown writ and other titles of the lands as aforesaid (*e*), and the said draft shall be revised by the presenter of signatures (*f*) on behalf of the Crown, in manner aforesaid (*g*); and all the provisions herein-before contained (*h*) with regard to drafts of Crown writs shall be and the same are hereby made applicable to such drafts of writs of clare constat or precepts from Chancery, and the draft of such writ of clare constat or precept, when docquetted as revised and approved in manner before provided (*i*), or, in the case of objections, the judgment or deliverance of the said Lord Ordinary (*k*), shall be officially transmitted to the office of the Director of Chancery in manner before provided (*l*), and shall form a valid and sufficient warrant for the preparation in Chancery of the writ of clare constat or precept in terms of the draft as corrected and approved, and the same shall forthwith be engrossed in the office of the Director of Chancery in terms of the draft as finally adjusted, signed, corrected, or approved, and officially transmitted as aforesaid, and shall be signed by the Director of Chancery or his depute or substitute (*m*), and recorded in Chancery in manner herein-after directed (*n*), and shall be thereafter delivered to the person applying for the same or his agent, in like manner in all respects and on payment of the same fees and charges as at present used and observed and payable; and the writ of clare constat or precept, when so engrossed and delivered, and with warrant of registration thereon recorded in the appropriate register of sasines, shall have the same legal force and effect in all respects, as if a precept from Chancery had been granted, and an instrument of sasine thereon had been duly expedite and recorded in favour of the person or persons on whose behalf such writ of clare constat or precept is presented for registration at the date of recording the said writ or precept: Provided always, that before the writ of clare

constat or precept is so delivered payment shall be made of the amount of duties and composition payable to the Crown or Prince, as the same shall have been fixed in manner above mentioned (o).

(a) This section re-enacts, with verbal alterations, the provisions of 10 and 11 Vict. c. 51, sec. 18 (with reference to the obtaining of precepts from Chancery), which took effect from and after 1st October 1847, and the provisions of 21 and 22 Vict. c. 76, sec. 11 (authorizing the use of writs of *clare constat*, and the recording of precepts or writs), which took effect from and after 1st October 1858.

The object of the section is to provide a simple mode by which the heir of a Crown vassal may complete a feudal title to lands in which his ancestor was infeft. As to the old mode of effecting this object, see Bell's Lectures on Conveyancing, 1st ed., p. 1003.

This section is neither expressly nor by implication repealed by any of the provisions of the Conveyancing Act. But in practice recourse is now never had to the forms here permitted; since the heir of a Crown vassal cannot have recourse to them unless he has obtained a decree of special service, and an heir with such decree can at once place himself in the position of an entered vassal by simply recording the decree with a warrant of registration thereon. See section 4 of the Conveyancing Act.

(b) That is to say, any person who has obtained a decree of special service. Section 85, *post*, p. 174, provides for the case of an heir who has obtained a decree of general service.

(c) A short writ first introduced by 21 and 22 Vict. c. 76, sec. 11 (2d August 1858), as equivalent to a precept from Chancery. It differs from a precept from Chancery in not containing a precept of sasine, and consequently an instrument of sasine cannot be expedited on such writ.

(d) A precept from Chancery, in the form in use prior to 1st October 1845, was a lengthy writ ordaining the Sheriff of the county within which the lands were situated to give sasine to an heir who had obtained a retour. By the sixth section of the Infeftment Act of 1845 (8 and 9 Vict. c. 35), printed *ante*, p. 16, it was provided that the precept should be addressed to any notary public, instead of to the Sheriff; and by the Crown Charters Act of 1847 (10 and 11 Vict. c. 51, sec. 18), a short form of precept requesting any notary public to give sasine was first introduced. The sixth section of the Infeftment Act being thus superseded, it is repealed by section 4 of the present Act, *ante*, p. 9.

(e) Viz., in section 64, *ante*, p. 146.

(f) For the words "presenter of signatures" substitute the

words Sheriff of Chancery, section 57 of the Conveyancing Act having abolished the office of presenter of signatures, and directed the duties of the office, so far as still necessary, to be discharged by the Sheriff of Chancery.

- (g) Viz., in section 65, *ante*, p. 148.
 - (h) Viz., in sections 64 to 78 inclusive, *ante*, p. 146 *et seq.*
 - (i) Viz., in section 72, *ante*, p. 154.
 - (k) See sections 74 to 78 inclusive, *ante*, p. 156 *et seq.*
 - (l) Viz., in section 78, *ante*, p. 160.
 - (m) They do not require to be sealed.
 - (n) Viz., in section 87, *post*, p. 176.
 - (o) Viz., in section 69, *ante*, p. 152.
-

SCHEDULE (U.)

No. 1.

Crown Writ of Clare Constat (a).

Victoria, &c. Whereas by decree of general service [or of special service, as the case may be] of *A.B.* [here insert the name and designation of the heir], dated [here insert the date of the decree], and recorded in Chancery [here insert the date of registration], and other authentic instruments and documents, it clearly appears that *C.D.* [here insert the name and designation of the ancestor] died last vest and seised as of fee in [here describe the lands, or refer to them as in Schedule (E.) (b) or Schedule (G.) (c), as the case may be]; and that in virtue of [here describe the Crown charter or Crown precept and sasine, or recorded Crown charter or Crown precept, or other Crown writ or writs forming the last investiture, by dates, and dates of registration in the register of sasines and register of Crown writs, and when the lands are held under a deed of entail, here

insert the destination, conditions, &c., at full length, or refer to them in or as nearly as may be in the form of Schedule (C.) (d), or, if desired, refer to them as follows, but always with and under the conditions, provisions, and prohibitory, irritant, and resolute clauses (or clause authorizing registration in the register of tailzies, as the case may be) contained in a deed of entail granted by G.H. (here name and design the grantor) dated the day of in favour of I.K. (here set forth the destination or such part thereof as may be deemed necessary, or say and the heirs therein specified], and which conditions, provisions, and prohibitory, irritant, and resolute clauses [or clause authorizing registration in the register of tailzies (e), as the case may be] are herein referred to as at length set forth in the said deed of entail which is recorded in the register of tailzies on the day of [or as at length set forth in the above-mentioned recorded charter, &c., forming the last investiture, or as at length set forth in any other recorded deed or conveyance. And in every case where there are real burdens, conditions, provisions, or limitations proper to be inserted or referred to, insert them here or refer to them in, or as nearly as may be in, the form of Schedule (D.) (f);] and that the said A.B. is eldest son and nearest and lawful heir of the said C.D. [or whatever relationship and character of heir the party holds, here state it]. Therefore we hereby declare the said A.B. to be the heir entitled to succeed to the said C.D. in the said lands to be holden of us and our royal successors in manner and for payment of the duties specified in the [here specify, or refer to, if previously specified, a Crown charter or other Crown writ containing the tenendas and reddendo. If the reddendo is different from that in the Crown charter or other Crown writ specified or referred to, or if the vassal should desire, specify the reddendo here]. Given at Edinburgh, the day of in the year .

[Signed by the Director of Chancery, or his depute or substitute.]

No. 2.

Precept from Chancery (a).

Victoria, &c. Whereas by decree of general service [or of special service, as the case may be], of *A.B.* [here insert the name and designation of the heir], dated [here insert the date of the decree], and recorded in Chancery [here insert the date of registration], and other authentic instruments and documents, it clearly appears that *C.D.* [here insert the name and designation of the ancestor] died last vest and seised as of fee in, &c., [as in No. 1. of this schedule down to and including the statement of the relationship and character of heir which the party holds, then say], and that the said lands and others are holden of us and our royal successors [here state the tenure, blench, feu, or other], for payment [here state the reddendo from the last charter or other writ, as the case may be]. Therefore we hereby desire any notary public to whom these presents may be presented to give to the said *A.B.* as heir foresaid sasine of the lands and others before described; [if there are conditions of entail, &c., or real burdens, here add] but always with and under the conditions, provisions, and prohibitory, irritant, and resolute clauses [or clause authorizing registration in the register of tailzies, as the case may be], [or with and under the burdens, conditions, provisions, and limitations, as the case may be], above specified or referred to, as the case may be. Given at Edinburgh, the day of in the year .

[Signed by the Director of Chancery, or his
depute or substitute.]

GENERAL NOTE TO SCHEDULE (U.) — When the writ or precept is to be granted by or on behalf of the Prince and Steward of Scotland, they will be in similar form, but will run in name of the Prince and Steward of Scotland, without adding His Highness's other titles; and the lands, instead of being described as hold-

ing of Her Majesty and her royal successors, will be described as holding of the Prince and Steward of Scotland.

(a) This writ is still competent, but not now in use; see note (a) *ante*, p. 170.

(b) For Schedule (E.) substitute Schedule O. appended to the Conveyancing Act; see *ante*, p. 39, and section 61 of the Conveyancing Act.

(c) Schedule (G.) is printed *ante*, p. 45.

(d) Schedule (C.) is printed *ante*, p. 36.

(e) See section 14, *ante*, p. 45.

(f) Schedule (D.) is printed *ante*, p. 38.

85. *Crown Writs or Precepts of Clare Constat may also be granted to Heirs holding only a General Service (a).*—It shall not be necessary that any Crown writ of clare constat or precept from Chancery (b) for infesting heirs shall proceed exclusively on special service in the particular lands for infestment in which such writ or precept is sought, but it shall be competent for any person to apply for and obtain such writ or precept, on lodging along with the last Crown writ or other titles as aforesaid (c) an extract retour or decree of general service, duly expedite and recorded, instructing the propinquity of such person to the party who died last vest and seised in the lands, or the character of heir otherwise belonging to him, and establishing his right to succeed to the said lands; and the writ of clare constat or precept granted on production of such extract retour or decree of general service shall be in the form, or as nearly as may be in the form, of the said Schedule (U.) No. 1. or 2. hereto annexed (d), and shall be applied for, revised, and obtained in like manner as herein-before (e) directed in regard to Crown writs; and the said writ or precept, when recorded, with warrant of registration thereon, in the appropriate register of sasines, shall be as valid and effectual as a writ or precept recorded under the provisions of the 84th section hereof (f).

(a) This section re-enacts the provisions of 10 and 11 Vict. c. 51, sec. 19 (with reference to the obtaining of precepts from Chancery), which took effect from and after 1st October 1847, and the provisions of 21 and 22 Vict. c. 76, sec. 11 (authorising the use of writs of clare constat, and the recording of precepts or writs), which took effect from and after 1st October 1858.

The object of the section is to provide a simple mode by which the heir of an ancestor with a personal right to lands held of the Crown may complete a feudal title. Prior to the Crown Charters Act of 1847, above-mentioned, a precept from Chancery could be obtained only on producing a special service, a general service being regarded as insufficient.

This section is neither expressly nor by implication repealed by any of the provisions of the Conveyancing Act. But in practice recourse is now never had to the forms here permitted. As infetment now implies entry with the superior, under section 4 of the Conveyancing Act, an heir with a general service prefers to take infetment by notarial instrument under section 23 of the present Act, and so complete a feudal title.

(b) As to the difference between a writ and a precept, see notes

(c) and (d) *ante*, p. 170.

(c) Viz., in section 64, *ante*, p. 146.

(d) Schedule (U.) is printed *ante*, p. 171 *et seq.*

(e) Viz., in sections 64 to 78 inclusive, *ante*, p. 146 *et seq.*

(f) *Ante*, p. 168.

86. *Crown Writs or Precepts of Clare Constat to be null unless recorded before first term after being issued. — Fees to be paid to Sheriffs and Sheriff Clerks for a limited period (a).*—All Crown writs of clare constat or precepts issued from the office of Chancery shall be null and void, unless recorded, with a warrant of registration thereon on behalf of the heirs in whose favour they are granted, in the appropriate register of sasines before the first term of *Whitsunday* or *Martimas* posterior to the date of such writ or precept, without prejudice to a new writ of clare constat or precept being issued; and the proper officer in Chancery shall receive at the same time certain fees on behalf of Sheriffs, Sheriff Substitutes, and Sheriff Clerks of the counties in which the lands lie, and on

which sasine would have been taken according to the form in use prior to the 1st day of *October* 1845, and to whom such officer shall account for the same, in place of the fees which they had been in use to receive, but such fees shall be paid only during the existence of the respective interests of the Sheriffs, Sheriff Substitutes, and Sheriff Clerks who held these respective offices at the said 1st day of *October* 1845, in their respective offices; and the Lords and Council of Session are hereby authorized and required by an Act or Acts of Sederunt to regulate and determine the amount of the fees to be so received on behalf of each such Sheriff, Sheriff Substitute, and Sheriff Clerk, having due regard to the existing interests of each (*b*).

(*a*) Part of this section, viz., that relating to the recording of Crown writs of *clare constat*, is a new enactment, thus taking effect from and after 31st December 1868; while the part relating to the recording of precepts from Chancery and to the fees here referred to is a re-enactment of provisions contained in 8 and 9 Vict. c. 35, sec. 6, which took effect from and after 1st *October* 1845.

The main object of the section is to limit the time within which Crown writs of *clare constat* or precepts from Chancery are competent warrants for infetment, lest the heir should delay taking infetment and so deprive the Crown of the non-entry duties that would otherwise be payable.

This object is, however, now defeated by section 4 of the Conveyancing Act, which abolishes the casualty of non-entry.

(*b*) No Act of Sederunt has been passed under the authority of this section. But section 162 provides that until new Acts of Sederunt shall be passed, those in force under the authority of any of the repealed Acts of Parliament shall remain in force. Consequently the Act of Sederunt of 3d July 1846, passed under the authority of 8 and 9 Vict. c. 35, sec. 6, still remains in force. It will be found at p. 19 of the second supplement to Alexander's *Abridgements of the Acts of Sederunt*.

The following are believed to be now the only persons entitled to the fees referred to, viz., the present Sheriffs of Dumfries and Peebles; the present Sheriff Substitutes of Kinross, Dumbarton, Inverness (Long Island District), Linlithgow, and Perth, and the present Sheriff Clerks of Argyll, Nairn, and Haddington.

87. *Register of Crown Writs to be kept* (*a*).—The Director of Chancery, or his deputy or substitute, shall

enter or cause to be entered in a book to be kept for the purpose, and entitled "The Register of Crown Writs," the whole Crown writ (*b*) at full length (*c*), and where any such writ is engrossed on a deed or conveyance the Director or his depute or substitute shall, in addition to the writ itself, enter or cause to be entered in the said register of Crown writs the leading name or names or short distinctive description of the lands comprehended in the deed or conveyance on which such writ is engrossed, or of such of those lands as the writ applies to, and the date of or of recording (*d*) such deed or conveyance, and, if recorded (*d*), the register in which the same is recorded (*e*): Provided always, that no Crown writ entered in the register of Crown writs before the commencement of this Act shall be held to be invalidly entered in such register, although the whole of such writ has been so entered, anything in the "Titles to Land (*Scotland*) Act, 1858," notwithstanding (*c*); and it is hereby provided that extracts from the said register of Crown writs, certified by the Director of Chancery or his depute or substitute, shall make faith in judgment in all cases except in case of improbation (*f*).

(*a*) This section re-enacts, with some additions, the provisions of 10 and 11 Vict. c. 51, sec. 20 (with reference to precepts from Chancery), which took effect from and after 1st October 1847, as extended to other Crown writs by 21 and 22 Vict. c. 76, secs. 6, 8, and 11, which took effect from and after 1st October 1858.

The object of the section is to provide a register in which all Crown writs must be recorded.

(*b*) Including any charter, precept, or writ from Her Majesty or the Prince; see interpretation clause (section 3, paragraph 5), *ante*, p. 6. But under section 4 of the Conveyancing Act the only Crown writs now competent are those mentioned in note (*a*) to section 63, *ante*, p. 145.

(*c*) Under the corresponding sections of the Titles to Land Act of 1858 it was not necessary to register the whole of a writ engrossed on a deed or conveyance, but apparently only a short abstract thereof. This was, however, found inconvenient, and the practice was accordingly to enter the whole writ in the register. Any possible doubt as to the correctness of this practice is removed by the proviso towards the end of the present section.

(*d*) The recording here meant is the recording of the deed or conveyance in the register of sasines.

(e) The clause here printed in small type is now inoperative, the writs here referred to being writs of confirmation and writs of resignation, which are now incompetent under section 4 of the Conveyancing Act.

(f) That is to say, shall be equally probative with the principal, except where the principal is challenged as forged.

88. *Crown Charters or Writs of Novodamus, how to be obtained (a).*—In every case in which a Crown charter or writ (b) of novodamus (c), or a Crown charter or writ (b) containing any new or original grant, shall be sought, the person applying for the same shall, previously to lodging the note before mentioned (d) in the office of the presenter of signatures (e), obtain the consent and approbation of the Commissioners of Her Majesty's Woods, Forests, and Land Revenues, or any one (f) of them, and of the Commissioners of the Board of Trade (g), under the hand of their secretary for the time being, and written evidence of such consent shall be produced along with the note to be lodged as aforesaid (d) in the office of the presenter of signatures (e); and the charter (c) or writ shall be revised and engrossed as in the ordinary case (h), but the same shall be lodged with the Queen's and Lord Treasurer's Remembrancer, and be by him transmitted for the sign-manual of Her Majesty, and the signatures of the Commissioners of Her Majesty's Treasury, or any two of them, or in case such charter or writ be of lands holden of the Prince, and His Royal Highness be then of full age, for the consent and approbation of the Prince, signified under his sign manual, after which the proper seal shall, if desired (i), be attached to such charters or writs, and the other procedure shall be as is provided in regard to Crown writs generally.

(a) This section re-enacts, with slight alterations and additions, the provisions of 10 and 11 Vict. c. 51, sec 22, which took effect from and after 1st October 1847.

Its object is to provide safeguards in the case of charters containing any new alienation of Crown property.

(b) By a writ of novodamus is meant a writ of resignation containing a reddendo different from that contained in the last investiture; see Schedule (T.) No. 1, *ante*, p. 166. Writs of resignation are, however, now incompetent under section 4 of the Conveyancing Act.

(c) A charter of novodamus is sought when the old title is amissing, or when it is desired to obtain an alteration in the conditions of the original grant, or an extension of the grant, such as rights of salmon-fishing.

(d) Viz., in section 64, *ante*, p. 146.

(e) For the words "presenter of signatures" substitute the words "Sheriff of Chancery," section 57 of the Conveyancing Act having abolished the office of presenter of signatures, and directed the duties of the office, so far as still necessary, to be discharged by the Sheriff of Chancery.

(f) Under the corresponding section of the Crown Charters Act of 1847 the consent of *two* Commissioners was required.

(g) Under the corresponding section of the Crown Charters Act of 1847 the consent of the Board of Trade was not required.

(h) See sections 65 to 72 inclusive, *ante*, p. 148 *et seq.*

(i) As to sealing, see section 78, *ante*, p. 160.

89. *Lodging Draft Crown Writ with Note, and recording Note, to be equivalent, in competition, to presenting a Signature and recording Abstract* (a).—The lodging of a draft of a proposed Crown writ, together with a short note in terms or to the effect of Schedule (S.) hereto annexed (b), praying for a Crown writ in terms of such draft, shall, in competition of diligence and all other cases, be deemed and held to be equivalent to the presenting of a signature in Exchequer; and recording a copy of such note, and an abstract of such draft writ, in the register of abbreviates of adjudications, shall be deemed and held to be equivalent to recording in the said register an abstract of such signature.

(a) This section re-enacts (with the substitution of the words "Crown writ" in place of the word "charter") the provisions of 10 and 11 Vict. c. 51, sec. 23, which took effect from and after 1st October 1847.

The object of this section is to secure the continuance (notwithstanding the introduction of the new forms of procedure set forth in the preceding sections) of the old rules of law in regard to preferences by adjudication. The Act 1661, c. 62, provided that all

comprisings (now adjudications) within year and day of that which was first made effectual should rank *pari passu*, and also declared the first effectual comprising to be that upon which infestment had followed, or the first exact diligence for obtaining the same. Where the lands were held of the Crown, the proper diligence to make an adjudication effectual was the presenting of a signature in Exchequer, and the recording of an abstract of such signature in the register of abbreviates of adjudication. See 54 Geo. III. c. 137, sec. 11, and 19 and 20 Vict. c. 91, sec. 6.

But the provisions of section 4 of the Conveyancing Act put it in the power of any creditor with a decree of adjudication to complete a feudal title, by merely recording his decree, without having recourse to the Crown or any other superior. No diligence being now required to obtain an entry, the first effectual adjudication will in every case be that on which infestment has been first taken. Hence the present section is virtually repealed.

(b) See section 64, *ante*, p. 146.

90. *Crown Writs to be in the English Language* (a).—All Crown writs and instruments following thereon, or relating thereto, shall be expressed in the *English* language.

(a) This section merely re-enacts, with verbal alterations, the provisions of 10 and 11 Vict. c. 51, sec. 25, which took effect from and after 1st October 1847. Prior to that date the Latin language was employed in Crown writs and sasines, except during the time of Cromwell. Charters, &c., from subject superiors have generally been expressed in the English language for nearly two centuries.

91. *Court of Session to frame Regulations* (a).—The Court of Session performing the duty of the Court of Exchequer as aforesaid (b), shall be and they are hereby authorized from time to time to frame and enact by rule of Court all such regulations as shall seem to them proper for giving effect to the purposes of the present Act, so far as they have reference to entries (c) with the Crown; and the said Court shall forthwith frame and enact a rule of Court fixing and determining the fees to be paid on the various Crown writs, steps of procedure, and other matters hereby

authorized with reference to such entries (*d*), but such rule of Court shall be subject to revision by the Court at any time or times thereafter.

(*a*) This section merely re-enacts, with slight alterations, the provisions of 10 and 11 Vict. c. 51, sec. 10, which took effect from and after 1st October 1847.

Its chief object is to regulate the fees payable for Crown writs.

(*b*) Viz., in section 66, *ante*, p. 149.

(*c*) The only entries now competent under section 4 of the Conveyancing Act are those of heirs by writs of *clare constat* or precepts from Chancery, and in practice these are never now asked for. See note (*a*) to section 63, *ante*, p. 145.

(*d*) The following is the Rule of Court passed on 27th January 1869, in pursuance of this enactment:—

Court of Exchequer.

RULE OF COURT FIXING THE FEES TO BE PAID ON CROWN WRITS.

Edinburgh, *January 27, 1869.*

WHEREAS, it is provided by the ninety-first section of the “Titles to Land Consolidation (Scotland) Act, 1868,” 31 and 32 Vict. c. 101, that “the Court of Session, as performing the duty of the Court of Exchequer as aforesaid, shall be, and they are hereby, authorised from time to time to frame and enact by rule of Court, all such regulations as shall seem to them proper to giving effect to the purposes of the present Act, so far as they have reference to entries with the Crown; and the said Court shall forthwith frame and enact a rule of Court, fixing and determining the fees to be paid on the various Crown writs, steps of procedure, and other matters hereby authorised with reference to such entries.”

And whereas, by the sixty-fifth section of the said Act, it is further provided that “the fees on signatures payable, prior to the first day of October One thousand eight hundred and forty-seven, to the presenter of signatures, shall be chargeable on the draft writ to be lodged and revised as aforesaid, and all other fees payable, prior to that date, to the officers of Exchequer on signature shall cease and determine.”

And whereas, by the seventieth section of the said Act, it is further provided that “the person applying for such Crown writ shall be bound to pay to the clerk of the presenter of signatures the fees to be fixed in manner hereinafter provided”—that is, in the 91st section of the Act as above set forth—“which fees shall

“ be paid over by such clerk to the Director of Chancery, who shall “ be accountable therefor.”

It is therefore ORDERED that, from and after the first day of January 1869 inclusive, the fees specified in the schedule hereto annexed shall be exigible by, and payable in, the office of the presenter of signatures to the clerk of the presenter of signatures, to be accounted for by him in manner above recited, and which fees are inclusive of those chargeable under the sixty-fifth section of the Act before recited.

(Signed) JOHN INGLIS, *I.P.D.*

SCHEDULE OF FEES.

Drafts of charters, writs, and precepts—	£	s.	d.
Of Bishops' lands,	0	15	9
Of other lands, below £400 Scots,	1	11	6
£400 and below £700,	1	17	6
£700 and below £1000,	2	6	6
£1000 and below £1500,	3	3	0
£1500 and upwards,	3	18	9
For every £1000 above said valuation £1, 11s. 6d., till the fee amounts to 15 guineas, which is the highest fee for any draft charter, writ, or precept.			
Signature of tutory,	1	2	6
Bond of caution,	0	12	6
Signature of tack of teinds, composition under £50,	1	11	6
above £50,	2	7	3
First enrolment,	0	10	0
Second enrolment,	0	5	0
Striking composition above £200,	0	6	8
under £200,	0	3	4
Valuation books,	0	5	0
Adjusting draft charter, writ, or precept, where no application to the Court is requisite,	0	3	4
Settled draft charter, writ, or precept,	0	10	0
Note of Objections, lodged in terms of sections 74 and 77 of Act,	0	5	0
Copy revised draft, furnished in terms of section 71 of Act, for each sheet of 250 words,	0	1	0

(Signed) JOHN INGLIS, *I.P.D.*

92. *Salary to be regulated by Commissioners of the Treasury, when vacancy (a).—Whenever any vacancy shall occur in the office of presenter of signatures, it shall be lawful to the Commissioners of Her Majesty's Treas-*

sure, or any three or more of them, to regulate the salary of the presenter of signatures as the then circumstances of the office may require.

(a) This section merely re-enacts the provisions of 10 and 11 Vict. c. 51, sec. 31, which took effect from and after 1st October 1847.

The office of presenter of signatures having been abolished by section 57 of the Conveyancing Act, the whole of this section has been repealed by the Statute Law Revision Act of 1875 (38 and 39 Vict. c. 66).

93. *Power to Prince and Steward of Scotland to appoint his own Presenter of Signatures (b), &c.* (a)—Notwithstanding anything in this Act contained, it shall be lawful for the Prince (c), being of full age, at any time or times hereafter to appoint his own presenter of signatures (b), and other officer or officers of Exchequer and Chancery, to discharge, in regard to all charters and precepts or writs of lands holden of him, the duties hereby assigned to the presenter of signatures (b) and other officers of Her Majesty's Exchequer and Chancery respectively; and in case of the office of presenter of signatures (b), or any such other office in Exchequer or Chancery as aforesaid for the Prince (c), being conferred on the person holding the corresponding office for the Crown, such officer shall be bound to act for the Prince (c) without additional salary; and the fees hereby authorized to be levied in respect of all charters and writs from the Prince (c) shall in that case be paid into the consolidated fund; but if any such appointment by the Prince (c) shall be conferred upon a different person, the person so appointed shall draw for his own use such of the said fees as shall arise from the duties performed by him in respect of such charters and writs.

(a) This section merely re-enacts, with slight alterations, the provisions of 10 and 11 Vict. c. 51, sec. 34, which took effect from and after 1st October 1847.

(b) For the words "presenter of signatures," substitute the

words "Sheriff of Chancery," section 57 of the Conveyancing Act having abolished the office of presenter of signatures, and directed the duties of the office, so far as still necessary, to be discharged by the Sheriff of Chancery. See also section 59 of that Act.

(c) Viz., the Prince and Steward of Scotland and his successors. See interpretation clause (section 3, paragraph 5), *ante*, p. 6.

94. *Compensation already awarded not to be affected (a).*—Nothing herein contained shall affect the right of any person to whom compensation shall have been awarded by way of annuity in virtue of the provisions of the 32d section of the Act 10th and 11th Victoria, chapter 51 (*b*), to receive compensation: Provided that if any person to whom compensation shall be so awarded by way of annuity shall be afterwards appointed to any other public office, such compensation shall be accounted *pro tanto* of the salary payable to such person in respect of such other office while he shall continue to hold the same.

(a) The first part of this section is a new enactment designed to preserve intact the rights of officials to compensation awarded under the provisions of the now repealed Crown Charters Act of 1847. The proviso is a re-enactment of a provision contained in section 32 of that Act.

(b) Viz., the Crown Charters Act of 1847, repealed and consolidated by the present Act.

95. *Compensation, how to be paid (a).*—The several compensations which may have been awarded under the authority of the last-recited Act (*b*) shall be payable out of the monies which by the Acts of the seventh and tenth years of the reign of Her Majesty Queen Anne were made chargeable with the fees, salaries, and other charges allowed or to be allowed for keeping up the Courts of Session, Justiciary, or Exchequer in Scotland.

(a) This section merely re-enacts, with a verbal alteration, the

provisions of 10 and 11 Vict. c. 51, sec. 33, which took effect from and after 1st October 1847.

(b) Viz., the Crown Charters Act of 1847 (10 and 11 Vict 51), sec. 32.

96. *Substitute to be appointed to Sheriff of Chancery, or Presenter of Signatures in event of absence or disability (a).*
—In the event of the temporary absence or disability of the Sheriff of Chancery or of the presenter of signatures it shall be competent to the Lord Justice General and President of the Court of Session to appoint a properly qualified person to act as substitute to the Sheriff of Chancery or to the presenter of signatures, as the case may be, such person receiving from the Sheriff of Chancery or from the presenter of signatures, as the case may be, such remuneration for so acting as shall be fixed by the said Lord Justice General and President of the Court of Session.

(a) This is a new enactment, thus coming into operation from and after 31st December 1868. It comes in place of 10 and 11 Vict. c. 47, sec. 30, which authorized the Lord Justice General to require the Sheriff of Chancery to discharge temporarily the duties of the presenter of signatures, and of 10 and 11 Vict. c. 51, sec. 29, which authorized him to require the presenter of signatures to discharge temporarily the duties of the Sheriff of Chancery.

The office of presenter of signatures having been abolished by section 57 of the Conveyancing Act, the words here printed in small type have been expressly repealed by the Statute Law Revision Act of 1875 (38 and 39 Vict. c. 66).

97 (a). *Subject Superior may be compelled to grant Entries by Confirmation (b).*—Where any person is or shall be infeft in lands holden of a subject superior upon a conveyance or deed of or relating to such lands granted by or derived from the person last entered with the superior and infeft, or granted by or derived from a person whose own title to such lands is capable of being made public by confirmation according to the existing law and practice, which conveyance or deed shall contain an obligation to infeft *a me* or *a me vel de me*, or shall contain a clause expressing the manner of holding to be *a me* or *a me vel de me*, or shall imply that the manner of holding is *a me* or *a me vel de me*, or upon any conveyance or deed which under this Act or any of the repealed Acts shall be equivalent to or have the effect of such a conveyance, it shall be lawful and competent for such person, upon production to the Lord Ordinary on the Bills in the Court of Session

of his infeftment, whether the same shall consist of such conveyance or deed itself, with a warrant of registration thereon in his favour, recorded in the appropriate register of sasines, or of an instrument or instruments in his favour, applicable to such lands, following on such conveyance or deed, and recorded in the appropriate register of sasines, and warrants of the same, and upon showing the terms and conditions under which the said lands are holden of the superior thereof, to obtain warrant for letters of horning to charge the superior to grant in favour of such person a writ or charter of confirmation in the same way and form as is provided and in use for compelling entry by resignation: Provided always, that the charger shall at the same time pay or tender to such superior such duties or casualties as he is by law entitled to receive upon the entry of the charger, and that it shall be lawful for every such superior to show cause why he ought not to be compelled to give obedience to such charge by presenting a note of suspension to the Court of Session in the usual manner.

(a) Here commences the part of the Act, extending to section 116 inclusive, which deals with vassals' entries with subject superiors. Almost all its provisions are now superseded or repealed by section 4 of the Conveyancing Act, under which infeftment implies entry with the superior.

The present section is one of those substituted by the Amendment Act of 1869, to be read and construed as if it had originally been the 97th section of the Consolidation Act; see note (a) *ante*, p. 1, and note (a) *ante*, p. 3. The only difference between the repealed and the substituted section is that the latter contains the words "*a me* or," which have been inserted in the clause, "*or shall contain a clause expressing the manner of holding to be a me or a me vel de me,*" and again in the clause "*or shall imply that the manner of holding is to be a me or a me vel de me,*" thus supplying an omission pointed out in Marshall's Analysis of the Consolidation Act, p. 132.

(b) This section re-enacts provisions of 10 and 11 Vict. c. 48, sec. 6, which took effect from and after 30th September 1847, but with such additions and alterations as are called for by the provisions of 21 and 22 Vict. c. 76, rendering instruments of sasine unnecessary from and after 1st October 1858, as well as introducing writs of confirmation from and after that date.

The object of the section is to render it compulsory on superiors to grant entries to their vassals by confirmation. Prior to the Act of 1847 the only mode by which a proprietor could compel his superior to enter him was by resignation, under the Act 20 Geo. II. c. 50; but in practice entries by confirmation were universally granted when requested. As to confirmation generally, see Bell's Lectures on Conveyancing, 1st ed., p. 680.

This section is now virtually repealed from and after 1st October 1874 by the provisions of section 4 of the Conveyancing Act, under which infeftment implies entry, and it is incompetent for superiors to grant charters and writs by progress.

98. *Confirmation by Subject Superior to be by Writ or Charter in form of Schedule (V.) Nos. 1. and 2. (a).*—Where such confirmation by a subject superior of any conveyance or deed or instrument recorded as before provided shall be required, it shall be competent for the superior to confirm such conveyance or deed or instrument by a writ of confirmation to be engrossed thereon, as nearly as may be in the form given in Schedule (V.) No. 1. hereto annexed, or, in the option of the person desiring confirmation, by a charter of confirmation in the form or as nearly as may be in the form given in Schedule (V.) No. 2. hereto annexed; and the confirmation granted in either of these forms of Schedule (V.) hereto annexed shall be, to all intents and purposes, as effectual as a charter of confirmation according to the law and practice prior to the 1st day of *October* 1858 (*b*), and the superior shall be bound so to confirm such conveyance or deed or instrument in either of the said forms in which he shall, by the person desiring confirmation, be required so to do, instead of in the form in use prior to the said date: Provided always, that the person requiring such confirmation be entitled to demand an entry by confirmation, and that he shall, if required, produce to the superior a charter or other writ showing the tenendas and reddendo of the lands contained in such conveyance or deed or instrument, and shall also at the same time pay or tender to the superior such duties or casualties as he may be entitled to demand: Provided also, that every superior shall be entitled to insert or refer in terms of this Act in the writ or charter to be granted by him to the whole clauses, burdens, and conditions contained in the former charter, in so far as they are not set forth at length or validly referred to in terms of this Act or of any of the Acts hereby repealed in the conveyance or deed or instrument confirmed.

(*a*) This section merely re-enacts, with slight alterations, the provisions of 10 and 11 Vict. c. 48, sec. 7, which took effect from and after 30th September 1847, as modified by 21 and 22 Vict. c. 76, sec. 7 (authorising the use of writs of confirmation), which took effect from and after 1st October 1858.

The object of the section was to provide short and simple modes of confirmation. Prior to the Act of 1847 a charter of confirmation required to specify all the prior titles to be confirmed; and prior to the Act of 1858 a charter separate from the deed to be confirmed was necessary. The present section consolidated the provisions of these Acts, thus rendering it unnecessary to specify any of the prior titles, and authorising the use of a very short writ engrossed on the deed or instrument to be confirmed.

This section has been virtually repealed from and after 1st October 1874 by the provisions of section 4 of the Conveyancing Act, under which infetment implies entry, and it is incompetent for superiors to grant charters or writs by progress.

(*b*) Viz., the date at which the corresponding section of the Act of 1858 took effect.

SCHEDULE (V.)

No. 1.

Writ of Confirmation by Subject Superior (a.)

I, *A.B.* [*here insert name and designation of superior*], hereby confirm this disposition [*or other deed or conveyance, as the case may be*], in favour of *C.D.*, as vassal in room and place of *E.F.* [*here name and design last vassal in the lands*] entered by [*here specify the charter or other writ by which the last vassal was entered, instrument thereon if any, and date of registration in the register of sasines if recorded*], but only in so far as consistent with the [*here specify, or refer to if previously specified, a charter or other writ containing the tenendas and reddendo, &c.*], and with my own rights. If the reddendo is to be different from that in the charter or other writ specified or referred to, or if the vassal should desire, specify the reddendo here]. In witness whereof [*insert a testing clause in usual form.*]

No. 2.

Charter of Confirmation by Subject Superior (a.)

I, *A.B.*, immediate lawful superior of the lands and others after mentioned, do hereby confirm for ever to and in favour of *C.D.* [*here name the party in whose favour the charter is granted*], and his heirs and assignees whomsoever, heritably and irredeemably, all and whole [*here insert, or refer, as in Schedule (E.) or Schedule (G.), as the case may be, to the lands to be confirmed, and if under conditions of entail or real burdens, &c., insert them or refer to them as in Schedule (C.) or Schedule (D.), as the case may be*], and a [*here specify the deed or conveyance which is to be confirmed in favour of C.D., and if the same has been recorded with warrant of registration in his favour, add with warrant of registration thereon*], in favour of the said *C.D.*, recorded in the [*here describe the register in which the said deed or conveyance is recorded*] on the day of , or of whatever other date or tenor the said disposition [*or other deed or conveyance*] may be, and that in so far as relates to the lands and others hereby confirmed, to be holden, the said lands and others, immediately of me and my successors, superiors thereof, in free blench farm [*or in feu farm, as the case may be*], for ever, paying therefor [*here insert the reddendo.*] And I consent to the registration hereof for preservation. In witness whereof [*insert a testing clause in usual form.*]

(a) Now incompetent; see note (a) *ante*, p. 187.

99. *Investiture by Resignation from Subject Superior (a).*—Where a new investiture from a subject superior by resignation shall be required it shall be competent for the superior to grant, in favour of the person in right of the conveyance or deed which is the warrant for resignation, a writ of

resignation, which shall be written on such conveyance or deed as nearly as may be in the form given in Schedule (V.) No. 3. hereto annexed, or, in the option of the person resigning, by a charter of resignation in or as nearly as may be in the form given in Schedule (V.) No. 4. hereto annexed; and the conveyance or deed, with such writ of resignation written thereon, or the charter of resignation in the separate form, shall be, to all intents and purposes, as effectual as if a charter of resignation had been granted in the usual form, according to the law and practice prior to the 1st day of *October* 1858 (*b*), and the superior shall be bound to grant such writ of resignation or such charter of resignation, if required so to do, instead of a charter of resignation in the form in use prior to said date: Provided always, that the party requiring such writ or charter be entitled (*c*) to demand an entry by resignation, and that he shall, if required, produce to the superior a charter or other writ shewing the tenendas and reddendo of the lands resigned, and shall also at the same time pay or tender to the superior such duties or casualties as he may be entitled to demand; and it shall be competent to record in the appropriate register of sasines the conveyance or deed, with the writ of resignation engrossed thereon, and warrant of registration also written thereon, or the charter of resignation with warrant of registration written thereon, or to expedite a notarial instrument on such charter, and to record such instrument, with warrant of registration thereon, in the appropriate register of sasines, and the recording of the conveyance or deed, with the writ of resignation and warrant of registration thereon, or of the charter, with warrant of registration thereon, or of the instrument, with warrant of registration thereon, shall have the same legal force and effect in all respects as if a charter of resignation had been granted, and such charter had been followed by an instrument of sasine duly expedite and recorded at the date of recording the said conveyance or deed, and writ or charter, or instrument according to the law and practice prior to the 1st day of *October* 1858 (*b*), in favour of the party on whose behalf the conveyance or deed, and writ or charter or instrument are presented for registration: Provided always, that the recording of such conveyance, along with such writ and warrant of registration thereon, shall not (*d*) have the effect of an instrument of sasine following on such conveyance or deed (*e*).

(*a*) This section re-enacts, with some additions, the provisions of 21 and 22 Vict. c. 76, sec. 9, which took effect from and after 1st October 1858, as amended by the insertion of the word “not” in the last proviso by 21 and 22 Vict. c. 143, sec. 33, which took effect from and after 1st October 1860. These Acts did not provide any form of charter of resignation, nor any form of writ of resignation by a subject superior. This omission is supplied by the present section.

The object of this section was to provide short and simple modes of entry by resignation. As to resignation generally, see Bell's *Lectures on Conveyancing*, 1st ed., p. 685.

This section has been virtually repealed from and after 1st October 1874 by the provisions of section 4 of the *Conveyancing*

Act, under which infeftment implies entry, and it is incompetent for superiors to grant charters or writs by progress.

(b) Viz., the date at which the corresponding section of the Act of 1858 took effect.

(c) Under 20 Geo. II. c. 50, sec. 12.

(d) The word "not" was by mistake omitted in the Act of 1858, but inserted by the Act of 1860; see note (a) *supra*.

(e) The object of this proviso is to prevent the constitution of two infeftments, one on the conveyance and the other on the writ of resignation, and the consequent splitting of the estate into two fees, one of property and the other of mid-superiority.

SCHEDULE (V.)

No. 3.

Writ of Resignation by Subject Superior (a).

I, *A.B.* [*here insert name and designation of superior*], in respect of the within clause [*or procuratory*] of resignation, dispone to *C.D.* the lands contained in this disposition [*or other deed or conveyance, as the case may be*], in his favour [*or in favour of G.H., or otherwise, as the case may be, specifying shortly the connecting title*], as vassal in room and place of *E.F.* [*here name and design last vassal in the lands*] entered by [*here specify the charter or other writ by which the last vassal was entered, and instrument thereon, if any, and date of registration in register of sasines if recorded*] (*b*), but only in so far as consistent with the [*here specify or refer to if previously specified a charter or other writ containing the tenendas and reddendo, &c.*], and with my own rights. [*If the reddendo is to be different from that in the charter or other writ specified or referred to, or if the vassal should desire, specify the reddendo here*]. In witness whereof [*insert a testing clause in usual form*].

No. 4.

Charter of Resignation by a Subject Superior (a).

I, *L.M.*, immediate lawful superior of the lands and others after mentioned, do hereby give, grant, dispone, and for ever confirm to *A.B.* and his heirs and assignees whomsoever [*or in case there be a substitution of heirs, here insert it at full length or refer to it as in Schedule (C.)*], heritably and irredeemably, all and whole [*here insert or refer as in Schedule (E.) or Schedule (G.), as the case may be, to the lands, and if held under conditions of entail or real burdens, &c., insert them or refer to them as in Schedule (C.) or Schedule (D.) as the case may be*], which lands and others formerly be-

onged to *C.D.*, holden by him of me as his immediate lawful superior hereof, in terms of [*here state briefly the investiture of the last entered vassal*], and have been resigned by him into my hands by virtue of a procuratory [*or clause*] of resignation contained in a disposition [*or other deed or conveyance, as the case may be*] of the said lands and others granted by him in favour of the said *A.B.*, dated [*here insert the date*]; to be holden the said lands and others of me, my heirs and successors, in free blench farm [*or in feu farm, as the case may be*] for ever, paying therefor [*here insert the reddendo*]: and I consent to the registration hereof for preservation. In witness whereof [*insert a testing clause in usual form*].

(a) Now incompetent; see note (a) *ante*, p. 189.

(b) The Act of 1858 provided a form of Crown writ of resignation, upon which writs by subject superiors were modelled by conveyancers. That form did not require the name of the last vassal, or the charter, &c., by which he was entered, to be set forth.

100. *All Writs and Charters from Subject Superior may refer Tenendas and Reddendo* (a).—All writs and charters from a subject superior of any denomination or nature (b), other than writs or precepts of clare constat may be in forms as nearly approaching as may be, and as the nature of the writ or charter will admit, to the examples given in the said Schedule (V.), the necessary alterations being made as the denomination or nature of the particular charter or writ may require; and such writs and charters, when granted in these forms, or as nearly as may be in these forms, shall have the same force and legal effect in all respects as if the same had been granted in any corresponding forms heretofore in use or competent, and shall be read and construed as largely and beneficially in all respects for the holders thereof as if the same had been expressed in and had contained the whole terms and words which are now used, or which were used in granting such writs or charters prior to the passing of the statutes repealed by this Act; and in granting all writs and charters (c) by subject superiors it shall be competent and sufficient to refer to the tenendas and reddendo of the lands therein contained, as set forth at length either in the writ or charter produced to the superior in terms of this Act, or in any charter or other writ recorded in any public register; and subject superiors shall be bound, if required, to grant such writs and charters containing such reference in like manner as they were bound to grant similar charters according to the forms in use prior to the 1st day of *October 1858* (d): Provided, that when the lands to which the deed or conveyance on which any writ shall be engrossed are held under a deed of entail, or under any real burdens or conditions or provisions or limitations whatsoever appointed to

be fully inserted in the investitures of such lands, it shall not be necessary in such writ (*e*) to insert or refer to the destination of heirs, or the conditions, provisions, and prohibitory, irritant, and resolute clauses or clause authorizing registration in the register of tallies contained in such deed of entail, provided the same are inserted at full length in such deed or conveyance, or are referred to therein in manner provided by the 9th section (*f*) of this Act, or to insert or refer to such real burdens or conditions or provisions or limitations, provided the same are inserted at full length in such deed or conveyance, or are referred to therein in manner provided by the 10th section (*g*) of this Act.

(*a*) The first part of this section, down to the words "repealed by this Act," is a new enactment, thus taking effect from and after 31st December 1868. The part relating to the tenendas and red-dendo is a re-enactment, with slight alterations, of 21 and 22 Vict. c. 56, sec. 10, which took effect from and after 1st October 1858. The proviso appears to be a new enactment, making applicable to writs of confirmation and resignation the provisions previously applicable to charters of confirmation or resignation, viz., the provisions contained in 10 and 11 Vict. c. 48, sec. 4 (permitting conditions of entail to be merely referred to); 21 and 22 Vict. c. 76, sec. 17 (permitting the destination to be merely referred to); and 23 and 24 Vict. c. 143, sec. 27 (permitting such reference in the case of entailed lands being excambed); 10 and 11 Vict. c. 48, sec. 5 (permitting reference to be made to real burdens, as contained in a recorded instrument of sasine); and 23 and 24 Vict. c. 143, sec. 31 (permitting such reference to be made to any recorded deed or instrument).

The object of the section is merely to abbreviate the forms of charters and writs by progress.

The words printed in small type have been virtually repealed from and after 1st October 1874 by the provisions of section 4 of the Conveyancing Act, under which infestment implies entry, and it is incompetent for superiors to grant charters by progress.

(*b*) Such as charters of adjudication and charters of sale, now incompetent. Charters of novodamus are still competent, but the forms here provided are not adapted to such charters.

(*c*) The only writs and charters now competent (besides original charters and charters of novodamus, to which this enactment is not applicable) are precepts or writs of *clare constat*.

(*d*) Viz., the date at which the Act 21 and 22 Vict. c. 76 took effect. There are now no writs or charters that subject superiors are bound to grant, except writs of *clare constat*; as to which see the following section.

(*e*) The only writs engrossed on deeds were writs of confirmation and writs of resignation, which are now incompetent.

(f) *Ante*, p. 33.

(g) *Ante*, p. 36.

101. *Precepts and Writs of Clare Constat from Subject Superior (a).*—Precepts (b) of clare constat may be in or as nearly as may be in the form given in Schedule (W.) No. 2. hereto annexed, and in all cases in which it is or may be competent to grant precepts of clare constat, or precepts of clare constat and charters of confirmation combined (c), it shall be competent and sufficient to grant a writ of clare constat in, or as nearly as may be in, the form given in Schedule (W.) No. 1. hereto annexed, and to record such writ of clare constat with a warrant of registration thereon, in the appropriate register of sasines; and it shall also be competent so to record any precept of clare constat, or precept of clare constat and charter of confirmation combined (c), with warrant of registration thereon, and such writ of clare constat or precept of clare constat, or precept of clare constat with charter of confirmation combined (c), being so recorded, shall have the same legal force and effect in all respects as if a precept of clare constat, or precept of clare constat with charter of confirmation combined, as the case may be (c), had been granted, and an instrument of sasine thereon had been expedite in favour of the person on whose behalf such writ or precept of clare constat, or precept of clare constat and charter of confirmation combined (c), as the case may be, and warrant of registration are presented for registration, and recorded at the date of recording the said writ, or precept, or precept and charter combined (c), and warrant, according to the law and practice in force prior to the 1st day of *October 1858 (d)*; and subject superiors shall be bound to grant such writs of clare constat if required by the heir entitled to demand the same (e): Provided always, that the heir shall, if required, produce a charter or other writ showing the tenendas and reddendo of the lands in which his ancestor died infeft, and shall also at the same time pay or tender to the superior such duties or casualties as he may be entitled to demand (f).

(a) This section re-enacts, with some additions, provisions contained in 21 and 22 Vict. c. 76, sec. 11, which came into operation on 1st October 1858. The additions consist chiefly in providing a short form of precept, and also a form of writ of *clare constat* applicable only to the case of subject superiors, the former Act having provided only a Crown writ of *clare constat*, on which writs by subject superiors required to be modelled by conveyancers.

The object of the section is to provide short and simple forms by which the heir of a deceased vassal may complete a feudal title to lands held of subject superiors without the necessity of obtaining a decree of service.

This mode of completing a title is not affected by the provisions of the Conveyancing Act, except as regards precepts of *clare constat* and charters of confirmation combined; see note (c) *infra*.

(b) A precept differs from a writ in containing a precept of sasine, and being thus a warrant for an instrument of sasine in the form introduced by the Infertment Act of 1845, *ante*, p. 14. In practice writs alone are used.

(c) A precept of *clare constat* was combined with a charter of confirmation in the case of the ancestor having died infert though not entered with the superior. Now, however, infertment implies entry; see section 4 of the Conveyancing Act.

(d) Viz., the date at which the corresponding provisions of 21 and 22 Vict. c. 76, came into operation.

As to the previous law and practice, see Bell's Lectures on Conveyancing Act, 1st ed., p. 1011.

(e) The corresponding section of the Act of 1858 provided that where the heir was required by the superior, he should produce a decree of general or of special service establishing his right to succeed to the lands.

(f) In feus granted after 1st October 1874 no legal casualties are exigible; see section 23 of the Conveyancing Act.

SCHEDULE (W.)

No. 1.

Writ of Clare Constat by a Subject Superior.

I, A.B., [insert name and designation of superior]:
Whereas by decree of general service, [or of special service, as the case may be] (a) of C.D. [here insert the name and designation of the heir], dated [here insert

the date of the decree], and recorded in Chancery [*here insert the date of registration*], and other authentic instruments and documents [*or by authentic instruments and documents*], it clearly appears that *E.F.* [*here insert the name and designation of the ancestor*] died last vest and seised as of fee (b) in [*here describe the lands or refer to them as in Schedule (E.) (c) or Schedule (G.) (d), as the case may be*], and that in virtue of [*here describe the charter or precept and sasine, or recorded charter or precept, or other writ or other deed or conveyance forming the last investiture, by dates, and dates of registration in the register of sasines, and where the lands are held under a deed of entail here insert the destination, conditions, &c., at full length, or refer to them in or as nearly as may be in the form of Schedule (C.) (e), or, if desired, refer to them as follows, but always with and under the conditions, provisions, and prohibitory, irritant, and resolute clauses (or clause authorizing registration in the register of tailzies (f), as the case may be), contained in a deed of entail granted by G.H. (here name and design the grantor) dated the* day of

in favour of *I.K.* (*here set forth the destination or such part thereof as may be deemed necessary, or say and the heirs therein specified*) and which conditions, provisions, and prohibitory, irritant, and resolute clauses (*or clause authorizing registration in the register of tailzies (f), as the case may be*) are herein referred to as at length set forth in the said deed of entail, which is recorded in the register of tailzies on the day of

(*or as at length set forth in the above-mentioned recorded charter, &c. forming the last investiture, or as at length set forth in any other recorded deed or conveyance. And in every case where there are any real burdens, conditions, provisions, or limitations proper to be inserted or referred to, insert them here, or refer to them in or as nearly as may be in the form of Schedule (D.) (g)*]; and that the said *C.D.* [*or if the heir has not been previously named, here say*], and that *C.D.* [*here insert his name and designation*] is eldest

son and nearest lawful heir of the said *E.F.* [*or whatever relationship and character of heir the party holds, here state it*]. Therefore, I hereby declare the said *C.D.* to be the heir entitled to succeed to the said *E.F.* in the said lands, to be holden of me and my successors in manner and for payment of the duties specified in the [*here specify or refer to if previously specified, a charter or other writ containing the tenendas and reddendo. If the reddendo is different from that in the charter or other writ specified or referred to, or if the vassal should desire, specify the reddendo here*]. In witness whereof [*insert a testing clause in usual form*] (*h*).

No. 2.

Precept of Clare Constat by a Subject Superior.

I, *A.B.* [*here insert name and designation of superior*]: Whereas, &c. [*as in No. 1. of this schedule*] it clearly appears that *E.F.* [*here insert the name and designation of the ancestor*] died last vest and seised as of fee (*b*) in &c. [*as in No. 1. of this schedule down to and including the statement of the relationship and character of heir which the party holds*]; and that the said lands and others are holden of me and my successors, as superiors thereof, in free blench farm [*or feu farm, as the case may be*], for ever, for payment of [*here specify the reddendo*]. Therefore I desire any notary public to whom these presents may be presented to give to the said *C.D.*, as heir aforesaid, sasine of the lands and others above described. [*If there are conditions of entail, &c. or other burdens or qualifications, here add, but always with and under the conditions, provisions, and prohibitory, irritant, and resolute clauses (or clause authorizing registration in the register of tailzies (f) (or with and under the real burdens, conditions, provisions, and limitations, as the case may be), above specified or referred to, as the case may be*]. In witness whereof [*insert a testing clause in usual form*] (*h*).

(a) As the Conveyancing Act enables an heir with a decree of service to complete a feudal title without the help of his superior by merely taking infeftment, writs of *clare constat* are not now applied for by heirs who have obtained themselves served.

(b) That is to say, was the last proprietor infeft in the lands, and not a mere liferenter.

Notwithstanding the provisions of the Conveyancing Act conferring a personal right on heirs by their mere survivance of their ancestor, an heir who has not completed a title may be passed over by a subsequent heir completing a title by service or writ of *clare constat*. In such a case, however, the lands are subject to the debts and deeds of the heir so passed over. See sections 9 and 10 of the Conveyancing Act.

(c) For Schedule (E.) substitute Schedule O. appended to the Conveyancing Act. See *ante*, p. 39, and section 61 of that Act.

(d) Schedule (G.) is printed *ante*, p. 45.

(e) Schedule (C.) is printed *ante*, p. 36. The alternative form here following is practically the same as that given in Schedule (C.)

(f) Under section 14, *ante*, p. 45, an express clause authorizing registration in the register of tailzies is equivalent to the prohibitory, irritant, and resolute clauses of a deed of entail.

(g) *Ante*, p. 38, or in the form of Schedule H. appended to the Conveyancing Act.

(h) As to the requisites of the testing clause, see section 38 of the Conveyancing Act.

102. *Heir in Burgage Subjects may make up title by Writ of Clare Constat (a).*—It shall be competent for the heir of any person who died last vest and seised (b) in any lands held burgage (c) to obtain from the magistrates of the burgh within which said lands are situated a writ of clare constat in or as nearly as may be (d) in the form given in Schedule (W.) No. 3. to this Act annexed; and such writ of clare constat may be signed by the provost or acting chief magistrate for the time, and by the town clerk, or, where there are more than one town clerk, by one of the town clerks, and when so signed shall be as valid as if signed by the whole of the magistrates (e); and such writ of clare constat may, with warrant of registration thereon in favour of such heir, be recorded in the appropriate register of sasines (f),

and, when so recorded, shall have the same effect in all respects as if at the date of such recording cognition and entry of such heir had taken place in due form, and an instrument of cognition and sasine in regard to such lands and in favour of such heir had been expedite and recorded according to the law and practice in force prior to the 1st day of *October* 1860 (g).

(a) This section re-enacts, with an addition referred to in note (e), *infra*, the provisions of 23 and 24 Vict. c. 143, sec. 7, which took effect from and after 1st October 1860.

Its object is to introduce a short and simple mode by which an heir to lands held burgage may complete a title.

Section 25 of the Conveyancing Act abolishes the distinction between burgage and feu, *inter alia*, in so far as regards the completion of titles; but this does not prevent an heir having recourse to the form here provided, as section 26 of that Act declares that conveyances (including, under the interpretation clause, all charters and writs) of land previously held burgage may be in the forms allowed by the Consolidation Act in regard thereto.

(b) See note (b), *ante*, p. 197.

(c) If the lands have been feued, recourse must be had to the forms provided in the preceding section; see note (a) to section 7, *ante*, p. 28.

(d) There should be no real deviation from the form prescribed.

(e) This is a new enactment. Previously the writ required to be signed by the provost and bailies, or a quorum of them.

(f) Viz., the appropriate burgh register.

(g) Viz., the date at which the corresponding provisions of the Act of 1860 came into operation.

As to the previous law and practice, see Bell's Lectures on Conveyancing, 1st ed., p. 1030.

SCHEDULE (W.)

No. 3.

Writ of Clare Constat in Burgage Subjects.

We, the provost and bailies of the burgh of [*insert name*], being the magistrates of said burgh, acting under and in terms of "The Titles to Land Consolidation

(Scotland) Act, 1868:” Whereas it clearly appears that *C.D.* [*insert name and designation of the ancestor*] died last vest and seised as of fee in, &c. [*as in No. 1. of this schedule (a) down to and including the statement of the relationship and character of heir which the party holds*] Therefore, we hereby declare the said *A.B.* to have right to the said lands as heir foresaid. In witness whereof [*to be signed by the provost or acting chief magistrate for the time, and the town clerk (or by one of the town clerks where there are more than one), and tested in usual form*] (b).

(a) *Ante*, p. 194 *et seq.*

(b) As to the requisites of the testing clause, see section 38 of the Conveyancing Act.

103. *Writs of Clare Constat from Subject Superiors, &c. not to fall by Death of the Grantor (a).*—All writs and precepts of clare constat, whether from subject superiors or from magistrates of a burgh, already made and granted, and still subsisting and in force, and all such writs and precepts of clare constat to be made and granted hereafter, shall, notwithstanding the death of the grantor thereof, remain in full force and effect during the whole lifetime of the grantee, and shall continue effectual as a warrant for giving infeftment to the grantee personally by sasine in terms thereof (b), or by recording the same, with warrant of registration thereon in his favour (c), at any time during the grantee’s life.

(a) This section re-enacts the provisions of 10 and 11 Vict. c. 48, sec. 15, which took effect from and after 30th September 1847, with the addition of the last clause, authorizing the recording of the writ, in terms of 21 and 22 Vict. c. 76, secs. 1 and 36, which took effect from and after 1st October 1858.

The object of the section is to prevent the writs referred to becoming inoperative through the death of the grantor before the grantee’s infeftment. The Act 1693, c. 35, which provided that procuratories of resignation and precepts of sasine should continue to be sufficient warrants for sasine notwithstanding the death of the grantor, or of the grantee, or of both, excepted from its provisions precepts of *clare constat*. The present enactment makes writs and

precepts effectual only during the grantee's life; if he dies without having taken infeftment the deeds referred to are mere waste paper.

(b) See note (b), *ante*, p. 194.

(c) See section 15, *ante*, p. 46.

104. (a) *Where Subject Superior's title incomplete, owner may in certain cases apply to Lord Ordinary on the Bills to ordain Superior to complete his title and grant an Entry under pain of forfeiture* (b).—Where the person having right to the superiority of any lands, which superiority is not defeasible at the will of the vassal or disponee (c), shall not have completed his feudal title thereto so as to enable him to enter any heir or disponee of the vassal last publicly infeft in the said lands, or any adjudger or other party deriving right from or through such vassal, where such heir, disponee, adjudger, or other party, if such person had been infeft in the superiority, would have been entitled to compel entry in virtue of this Act (d), or of an Act passed in the twentieth year of the reign of His Majesty King *George the Second* (e), or otherwise, it shall be competent to such heir, disponee, adjudger, or other party, provided the annual reddendo attached to such superiority shall not exceed five pounds sterling in value or amount, to present a petition to the Lord Ordinary on the Bills, in the form or as nearly as may be in the form No. 1. of Schedule (X.) hereto annexed, praying for warrant of service on such person (f), and for decree in the terms set forth in such petition, and the Lord Ordinary on the Bills shall pronounce an order for service of such petition in terms or as nearly as may be in terms of the interlocutor No. 2. of Schedule (X.) hereto annexed; and if after such service, and the expiration of the days of intimation, such person shall not comply with the demand of the petition by completing his title and granting entry to the petitioner as aforesaid, or shall not show reasonable cause to the Lord Ordinary why he delays or refuses so to do, he shall, for himself and his heirs, whether of line, conquest, taillie, or provision, forfeit and amit all right to the said superiority, and the Lord Ordinary shall pronounce decree or judgment accordingly to the effect of entitling the petitioner, and his heirs and successors in the said lands, in all time thereafter to hold the same as vassals immediately of and under the next over superior by the tenure and for the reddendo by and for which the forfeited superiority was held, all in the form or as nearly as may be in the form No. 3. of Schedule (X.) hereto annexed; and such decree or judgment, and any similar decree or judgment which may have been pronounced under any of the Acts of Parliament hereby repealed (g), when extracted and recorded (h) in the register of sasines appropriate to the lands, shall be held absolutely to extinguish such right of superiority, and shall enable the petitioner to apply to such over superior, as his immediate superior, for an entry accordingly: and it is hereby provided, that in the renewed investiture to be so obtained by the petitioner under the authority of the said decree or judgment, the tenendas and reddendo contained in the title deeds of the forfeited superiority shall be inserted in room of those contained in the investiture of the petitioner's predecessor or author, and the lands shall be held by the petitioner and his suc-

cessors according to the tenure of the forfeited superiority in all time thereafter; and the writ in the petitioner's favour shall be expressed as nearly as may be in one or other of the forms given in Schedule (AA.) hereto annexed.

(a) Here commences the part of the Act which deals with the forfeiture and relinquishment of mid-superiorities.

According to feudal principle, a superior could not enter his vassals unless he was himself entered with his superior, although entries by him might be validated *accretion* by his own subsequent entry. The Act 1474, c. 57, enabled a vassal to pass over an unentered superior and to obtain an entry from the next over superior, the superior so passed over forfeiting his estate of superiority during the lifetime of the vassal. The Lands Transference Act of 1847 (10 and 11 Vict. c. 48, secs. 8-14) introduced a simpler mode of enforcing an entry, by means of which the mid-superiority was permanently extinguished, or the casualties were forfeited and the feu-duties retained till the expenses of the procedure should be defrayed therefrom. The present Act, by sections 104 to 112 inclusive, re-enacts the various sections of the Lands Transference Act on this subject, and also some further provisions contained in the Titles to Land Act of 1858.

The whole of these enactments have, however, been virtually repealed from and after 1st October 1874, by section 4 of the Conveyancing Act, which provides that the infeftment of a proprietor shall imply entry with his superior, "whether the superior's own title or "that of any over superior has been completed or not," and that it shall be incompetent for superiors to grant charters or writs by progress. No one, therefore, has now any title or interest to insist on the forfeiture of a superiority; and the whole of the judicial procedure authorized by the present Act appears to have become not only unnecessary but positively incompetent. Moreover, the writs granted by the over superior, by which the judicial procedure was completed, are clearly incompetent, with the exception of writs of *clare constat*, as to which see note (b) *post*, p. 205.

(b) This section merely re-enacts 10 and 11 Vict. c. 48, sec. 8, which took effect from and after 30th September 1847.

(c) When a vassal or disponee obtained a disposition with an alternative holding, and took infeftment thereon, the infeftment was presumed to be on the *de me* holding, and a mid-superiority remained in the person of his author, but this mid-superiority was defeasible at the will of the vassal or disponee, who could extinguish it by obtaining an entry from his author's superior.

(d) Viz., under section 97, *ante*, p. 185, which made it compulsory on superiors to grant entries by confirmation.

(e) Viz., 20 Geo. II. c. 50, sec. 12, which made it compulsory on superiors to grant entries by resignation.

(f) That is to say, the person having right to the superiority. Accordingly it is not sufficient to call merely the heir of the person

last infeft in the superiority, where such person has conveyed the superiority to disponees who remain uninfeft. Thus, in the case of *Rossmore's Trs. v. Brownlie*, Nov. 23, 1877, 5 Rettie 201, the Court reduced a decree of forfeiture, and a charter of confirmation following thereon, on the ground that the petitioner had omitted to call the persons truly having right, though only a personal right to the superiority, viz., the marriage-contract trustees of the person last infeft in the superiority.

(g) Viz., 10 and 11 Vict. c. 48, sec. 8.

(h) A warrant of registration was necessary from and after 31st December 1868; see section 141, *post*.

SCHEDULE (X.)

No. 1.

Petition to the Lord Ordinary for Forfeiture of Superiority where Reddendo does not exceed Five Pounds (a.)

Unto the Honourable the Lord Ordinary on the Bills, the Petition of A.B. humbly sheweth, That by disposition dated the granted by C.D. of the said C.D. disposed to the petitioner all and whole [*here describe the subjects as in the Disposition*] to be held of the disponent's superior, with warrants of resignation and infeftment:

That the petitioner's author, the said C.D., held the said lands and others of and under the late E.F. as his immediate lawful superior, for an annual reddendo not exceeding in value or amount five pounds sterling; that G.H. is the eldest son [*or whatever other relation he is*] and apparent heir of the said E.F., and as such has right (b) to the superiority of the said lands and others, but he has not made up a feodal title thereto, and is therefore not in a situation to grant entry to the petitioner, although demanded from him; and the petitioner now applies to your Lordship for redress in terms of the Act [*here mention this Act*], and produces the above-mentioned disposition in his favour.

May it therefore please your Lordship, in terms of the said Act, to grant warrant for serving this petition on the said G.H. personally, or at his dwelling place [*here add a prayer for edictal citation in the usual form, if the party is furth of Scotland*], and to ordain him, within thirty days after the date of such service [*or within sixty days, if he be furth of Scotland, or in Orkney or Shetland*], to procure himself entered and infeft in the said lands and others, and to enter the petitioner in the same, on payment of the duties and casualties exigible on such entry, or else to show cause for delaying or refusing to do so, with certification that if he fail he shall forfeit and amit all right to the said superiority; and in the event of the said G.H. failing so to complete his title and grant entry to the petitioner, or

to show reasonable cause why he delays or refuses so to do, to find and declare that the said *G.H.* has forfeited and amitted all right to the said superiority, and that the petitioner and his heirs and successors are entitled to hold the said lands and others in all time coming as vassals immediately of and under the next over superior by the tenure and for the reddendo by and for which the forfeited superiority was held. According to Justice, &c.

NOTE.—The above form is applicable to the case where the petitioner requires a charter or writ of resignation. In other cases the form must be varied, so far as necessary, to suit the circumstances.

No. 2.

Interlocutor by Lord Ordinary on above Petition (a).

The Lord Ordinary grants warrant to messengers-at-arms to serve the said petition and this deliverance on the said *G.H.* as prayed for, and ordains the said *G.H.*, within thirty days [*or sixty days, as the case may be*] after the date of such service, to procure himself entered and infeft in the lands and others described in the petition, and to enter the petitioner in the same, on payment of the duties and casualties exigible on such entry, or else to show cause for delaying or refusing to do so, with certification that if he fail he shall forfeit and amit all right to the said superiority in terms of the said Act.

No. 3.

Decree by Lord Ordinary on above Petition (a).

The Lord Ordinary, having resumed consideration of the said petition, with the execution thereon, now expired, in respect the said *G.H.* has not shown cause for delaying or refusing to complete his title to the superiority, and to grant an entry to the petitioner, finds and declares, That the said *G.H.* has forfeited and amitted all right to the said superiority, and that the petitioner and his heirs and successors are entitled to hold the lands and others described in the petition in all time coming as vassals immediately of and under the next over superior by the tenure and for the reddendo by and for which the said forfeited superiority was held; grants warrant to the petitioner and his foresaids to apply for and obtain an entry in the said lands and others from the said over superior, in the terms foresaid, and decerns and ordains the decree to be extracted hereon to be recorded in the register of sasines.

(a) Incompetent since 1st October 1874; see note (a), *ante*, p. 201.

(b) See note (f), *ante*, p. 201.

SCHEDULE (AA.)

No. 1.

Writ of Confirmation proceeding on a Decree of Forfeiture or Relinquishment (a).

I, *L.M.*, immediate lawful superior of the lands and others contained in the within disposition [*or other deed or conveyance, as the case may be*], in virtue of a decree of forfeiture [*or relinquishment, as the case may be*] against *G.H.*, heir apparent of my immediate vassal last infeft in the said lands and others, pronounced by Lord Ordinary on the Bills, upon the day of , in a petition at the instance of *A.B.* [*here design the disponent*], do hereby confirm this disposition [*or other deed or conveyance, as the case may be*], in favour of the said *A.B.*; to be holden, the said lands and others, by the said *A.B.* and his foresaids, in all time hereafter, immediately of me and my successors, as superiors thereof, in free blench farm, [*or in feu farm, as the case may be, according to the tenure by which the forfeited or relinquished superiority was held,*] for ever, paying therefor [*here specify the reddendo for which the forfeited or relinquished superiority was held*]. In witness whereof [*insert a testing clause in the usual form*].

No. 2.

Writ of Resignation proceeding on a Decree of Forfeiture or Relinquishment (a).

I, *L.M.*, immediate lawful superior of the lands and others contained in the within disposition [*or other deed or conveyance, as the case may be*], in virtue of a decree of forfeiture [*or relinquishment, as the case may be*] against *G.H.*, heir apparent of my immediate vassal last infeft in the said lands and others, pronounced by Lord Ordinary on the Bills, upon the day of in a petition at the instance of *A.B.* [*here design the disponent*], do hereby dispoise to the said *A.B.* the lands contained in this disposition [*or other deed or conveyance, as the case may be,*] in his favour, [*or in favour of C.D., or otherwise as the case may be, specifying shortly the connecting title*], which lands formerly belonged to [*here insert the designation of the disponent*], holden by him under my immediate vassal, and now of myself, in terms of [*here state briefly the investiture of the last entered vassal*], and have been resigned by the said *A.B.* in my hands, as now coming in place of his immediate superior, by virtue of the clause [*or procuratory*] of resignation contained in the within disposition [*or other deed or conveyance, as the case may be*]; to be holden the said lands immediately of me and my successors, as superiors thereof, in free blench farm, [*or in feu farm, as the case may be, according to the tenure by which the forfeited or relinquished superiority was held*], for ever, paying therefor [*here specify the reddendo for which the forfeited or relinquished superiority was held*]. In witness whereof [*insert a testing clause in the usual form*].

No. 3.

Writ of Clare Constat proceeding on a Decree of Forfeiture or Relinquishment (b).

I, *A.B.*, immediate lawful superior of the lands and others after mentioned, in virtue of a decree of forfeiture [or relinquishment, as the case may be] against *G.H.*, heir apparent of my immediate vassal last infeft in the said lands and others, pronounced by Lord Ordinary on the Bills, dated the day of in a petition at the instance of *C.D.* [here name and design the heir in whose favour the writ is to be granted]: Whereas by authentic instruments and documents it clearly appears that *E.F.* [here name and design the ancestor] died last vest and seised as of fee in, &c. [as in Schedule (W.) No. 1. down to and including the statement of the relationship and character of heir which the party holds]; and that the said lands and others are, in virtue of the said decree, now holden of me and my successors, as superiors thereof, in free blench farm, [or feu farm, as the case may be, according to the tenure by which the forfeited or relinquished superiority was held], for ever, for payment of [here specify the reddendo for which the forfeited or relinquished superiority was held]. Therefore, I hereby declare the said *C.D.* to be the heir entitled to succeed to the said *E.F.* in the said lands to be holden of me and my foresaids for payment of the said duties. In witness whereof [insert a testing clause in the usual form].

NOTE.—Where the next superior is the Crown, writs by the Crown will be granted in similar terms to the above, but adapted to the forms of Chancery.

(a) Incompetent since 1st October 1874; see note (a), ante, p. 201.

(b) Writs of *clare constat* are still competent; but as an heir can now complete a feudal title, under section 4 of the Conveyancing Act, by merely taking infeftment on his decree of service, without the intervention of superior, it is thought that he cannot now insist for or obtain a decree of forfeiture or relinquishment of the superiority. The above form of writ thus appears incompetent since 1st October 1874.

105. *Owner may in such case apply to Lord Ordinary on Bills to authorize application for an entry by the Crown or mediate Over Superior as in vice of the recusant Superior (a).*—If in the case aforesaid (b) the annual reddendo shall exceed in value or amount the sum of five pounds sterling, or, in the option of the said heir, disponee, adjudger, or other party, whether the said annual reddendo shall exceed the said sum of five pounds sterling or not, it shall be lawful for such heir, disponee, adjudger, or other party to present a petition to the Lord Ordinary on the Bills, in the form or as nearly as may be in the form of No. 1. of Schedule (Y.) hereto annexed, praying for warrant and decree as there set forth, and the Lord Ordinary shall pronounce an order for service, in the terms or as nearly as may be in the terms of the interlocutor given in No. 2. of Schedule (Y.) hereto annexed; and if

after such service and expiration of the days mentioned in such order of service such person (*c*) shall not comply with the demand of the petition by completing his title and granting entry to such petitioner as aforesaid, or shall not show reasonable cause to the Lord Ordinary why he delays or refuses so to do, he shall, for himself and his heirs, whether of line, conquest, tailie, or provision, forfeit and amit all right to the dues and casualties payable on the entry of such petitioner, who shall also be entitled to retain his feu duties or other annual prestations until fully paid and indemnified for all the expenses of the petition and procedure thereon, and all the expenses of completing his title in terms of this Act; and the Lord Ordinary shall pronounce interim decree to that effect, and grant interim warrant for such petitioner applying for and obtaining an entry from the Crown (*d*), or, in the option of the petitioner, from the mediate over superior as acting in the vice of such superior, all in the form or as nearly as may be in the form of No. 3. of Schedule (Y.) hereto annexed; and any petitioner who shall obtain such decree under this Act, or who shall have obtained a similar decree under a petition presented in virtue of any of the Acts of Parliament hereby repealed (*e*), shall be entitled forthwith to lodge, along with an extract of the said decree, in the office of the presenter of signatures, a draft of a proposed writ from the Crown (*d*), as in vice of such superior, with a short note in terms of this Act; and such writ, for which the said extract decree shall be a sufficient warrant, may be in or as nearly as may be in one or other of the forms given in Schedule (Z.) hereunto annexed, and shall be as effectual as if granted by the mediate superior of the feu duly infeft in the superiority; and, when there is a mediate over superior duly infeft, such extract decree shall, in the option of the petitioner, be directed against such mediate over superior, and shall be a sufficient warrant for letters of horning to charge such mediate over superior to enter the petitioner by granting a valid writ as in vice of such superior; and after completion of his title the petitioner shall be entitled, if he thinks fit, to lodge, as part of the proceedings under his petition, an account of the expenses of that process, and of completing his title, and the Lord Ordinary shall, if required on the part of such petitioner, modify the amount thereof, and decern for retention as aforesaid, in the form of No. 4. of Schedule (Y.) hereto annexed.

(*a*) This section merely re-enacts, with verbal alterations, 10 and 11 Vict. c. 48, sec. 9, which took effect from and after 30th September 1847.

As to the object of the section, and the repeal operated by the Conveyancing Act, see note (*a*) to section 104, *ante*, p. 201.

(*b*) Viz., in section 104, *ante*, p. 200.

(*c*) See note (*f*) to section 104, *ante*, pp. 201–2.

(*d*) Including Her Majesty and the Prince; see interpretation clause (section 3, paragraph 5), *ante*, p. 6.

(*e*) Viz., 10 and 11 Vict. c. 48, sec. 9.

SCHEDULE (Y.)

No. 1.

Petition to the Lord Ordinary for Forfeiture of Feu Duties under or above Five Pounds (a).

Unto the Honourable the Lord Ordinary on the Bills, the Petition of *A.B.* humbly sheweth, That by disposition dated the day of granted by *C.D.* of the said *C.D.* disposed to the petitioner all and whole [*here describe the subjects as in the disposition*] to be held of the disponent's superior, with warrants of resignation and sasine :

That the petitioner's author, the said *C.D.*, held the said lands and others of and under the late *E.F.* as his immediate lawful superior ; that *G.H.* is the eldest son [*or whatever other relation he is*] and apparent heir of the said *E.F.*, and as such has right to the superiority of the said lands and others, but he has not made up a feudal title thereto, and is therefore not in a situation to grant entry to the petitioner, although demanded from him. The petitioner now applies to your Lordship for redress in terms of the Act [*here mention this Act*], and produces the above-mentioned disposition in his favour.

May it therefore please your Lordship, in terms of the said Act, to grant warrant for serving this petition on the said *G.H.* personally or at his dwelling place [*here add a prayer for edictal citation in the usual form, if the party is furth of Scotland*], and to ordain him, within thirty days after the date of such service [*or within sixty days, if he be furth of Scotland, or in Orkney or Shetland*], to procure himself entered and infeft in the said lands and others, and to enter the petitioner in the same, on payment of the duties and casualties exigible on such entry, or else to show cause for delaying or refusing to do so, with certification that if he fail he shall forfeit and amit all right to the duties and casualties payable on the entry of the petitioner, and that the petitioner shall be entitled to retain from him and his successors, as immediate superiors, the yearly feu duties and whole other prestations until fully paid and indemnified for all the expenses of this petition and procedure to follow hereon, and for all the expenses of completing the petitioner's title in terms of the said Act ; and thereafter, on resuming consideration of this petition, with or without answers, to find and declare that the said *G.H.* has forfeited and amitted all right to the dues and casualties payable on the entry of the petitioner, and that the petitioner is entitled to retain from him and his successors, as immediate superiors, the yearly feu duties and whole other prestations until fully paid and indemnified for all the expenses of this petition, and of the procedure to follow hereon, and for all the expenses of completing the petitioner's title in terms of the said Act ; and also to grant warrant to the petitioner to apply for and obtain an entry in the said lands and others from the Crown [*or Prince of Scotland, or I.K., the mediate over superior*], as acting in the vice

of the said *G.H.*, and to authorize decree to the above effect to be extracted *ad interim*; and thereafter, upon the completion of the petitioner's title by an entry from the Crown [*or Prince of Scotland, or such mediate over superior*] as aforesaid, to remit the accounts of the expenses of this petition and procedure hereon, and of the expenses of completing the petitioner's title, to the auditor to tax the same, and to report, and to modify the amount of the said expenses, and to decern for retention of the amount thereof as aforesaid [*if the parties have agreed to or are in treaty for a relinquishment, add, or in the event of the said G.H. relinquishing the superiority, to find, decern, and declare the same to be extinguished in manner and to the effect expressed in the statute*], or to do otherwise in the premises as to your Lordship shall seem just. According to Justice, &c.

NOTE.—The above form is applicable to the case where the petitioner requires a writ of registration (*b*). In other cases the form must be varied so far as necessary to suit the circumstances.

No. 2.

Interlocutor by Lord Ordinary in above Petition (a).

The Lord Ordinary grants warrant to messengers-at-arms to serve the said petition and this deliverance on the said *G.H.*, as prayed for, and ordains the said *G.H.*, within thirty days [*or sixty days, as the case may be*] after the date of such service, to procure himself entered and infeft in the lands and others described in the petition, and to enter the petitioner in the same, on payment of the duties and casualties exigible on such entry, or else to show cause for delaying or refusing to do so, with certification that if he fail he shall forfeit and amit all right to the duties and casualties payable on the petitioner's entry, and that the petitioner shall be entitled to retain from him and his successors, as immediate superiors, the yearly feu duties and the whole other prestations, until fully paid and indemnified for the expenses of the petition and procedure thereon, and for all the expenses of completing the petitioner's title in terms of the said Act.

No. 3.

Decree by Lord Ordinary in above Petition (a).

The Lord Ordinary, having resumed consideration of the said petition, with the execution thereon, now expired, in respect the said *G.H.* has not shown cause for delaying or refusing to complete his title to the superiority, and to grant an entry to the petitioner, finds and declares, That the said *G.H.* has forfeited and amitted all right to the duties and casualties payable on the entry of the petitioner, and that the petitioner is entitled to retain from him and his successors, as immediate superiors, the yearly feu duties and whole other prestations, until fully paid and indemnified for all the expenses of the said petition and procedure thereon, and for all the expenses of completing the petitioner's title; grants warrant to the petitioner to apply for and obtain an entry in the lands and others described in the petition from the Crown [*or Prince of Scotland, or I.K., the mediate over*

superior], as acting in vice of the said *G.H.*, and decerns and allows this decree to go out and be extracted *ad interim*; and on the petitioner's title being completed, appoints accounts of the expenses of the petition and procedure thereon, and of completing the title, to be lodged, and remits the same, when lodged, to the auditor to tax and report.

No. 4.

Finding for Expenses in above Petition (a).

The Lord Ordinary approves of the auditor's report on the petitioner's account of expenses, modifies the same to £ sterling, and decerns against the said *G.H.* for payment thereof to the petitioner by retention, as prayed for [or personally against the said *G.H.*, as the case may be].

(a) Incompetent since 1st October 1874; see note (a) to section 104, *ante*, p. 201.

(b) The word "registration" is a mistake for "resignation."

SCHEDULE (Z.)

No. 1.

Writ of Confirmation on Decree of Forfeiture in case of Feu Duties above Five Pounds (a).

Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith. We confirm this disposition [or other deed or conveyance, as the case may be] in favour of *A.B.*; to be holden the said lands and others of the Crown as in room of *G.H.* [here name and design the person against whom decree has been obtained], the eldest son [or whatever other relation he may be] of *E.F.* [here name and design the person last infeft in the superiority], who was last infeft in the immediate superiority of the said lands, in respect that the said *G.H.* having failed to complete his title to the said superiority, and to grant an entry to the said *A.B.*, the said *A.B.*, in virtue of an Act [here set forth the title of this Act], obtained a decree by the Lord Ordinary on the Bills, dated the granting warrant to the said *A.B.* to apply for and obtain an entry in the said lands and others from the Crown, as acting in vice of the said *G.H.*, and that while and so long as the said *G.H.* and his successors, the immediate superiors thereof, shall remain unentered, and thereafter until a new entry shall become requisite, and that by the same tenure by which the same were or might have been holden of the said *G.H.*; and for payment to him and his successors, who are properly immediate lawful superiors of the said lands and others, of the annual duties and casualties heretofore payable, but only upon the completion of their title in the superiority. Given at Edinburgh, the day of in the year .

[Signed by the Director of Chancery, or his depute
or substitute.]

No. 2.

Writ of Resignation on Decree of Forfeiture in case of Feu Duties above Five Pounds (a).

Victoria, &c. We do hereby dispoⁿe to *A.B.* [*here name the dispoⁿee*] the lands contained in this disposition [*or other deed or conveyance, as the case may be*], in his favour, which lands formerly belonged to *C.D.* [*here name and design the dispoⁿer*], holden by him immediately of *E.F.* [*here name and design the person who died last infeft in the superiority*], in terms of [*here state the investiture of the dispoⁿer*], and now of the Crown as in vice of the immediate superior thereof, in respect that the said *E.F.* being dead, and *G.H.*, his eldest son [*or whatever other relation he may be*] and heir apparent, who is in right of the superiority, having failed to complete his title thereto, and to grant an entry to the said *A.B.*, the said *A.B.*, in virtue of an Act [*here set forth the title of this Act*], obtained a decree by the Lord Ordinary on the Bills, dated the day of granting warrant to the said *A.B.* to apply for and obtain an entry in the said lands and others from the Crown as acting in vice of the said *G.H.*, and which lands and others have been resigned into our hands as in vice of the said *G.H.*, in virtue of the clause [*or procuratory*] of resignation contained in this disposition [*or other deed or conveyance, as the case may be*]; to be holden the said lands and others of the Crown as in room of the said *G.H.*, who is properly the immediate lawful superior thereof, while and so long as he and his successors, the immediate superiors thereof, shall remain unentered, and thereafter until a new entry shall become requisite, and that by the same tenure by which the same were or might have been holden of the said *G.H.*; and for payment to him and his successors, who are properly the immediate lawful superiors of the said lands and others, of the annual duties and casualties heretofore payable, but only upon the completion of their title in the superiority. Given at Edinburgh, the day of in the year .

[Signed by the Director of Chancery, or his depute
or substitute.]

NOTE.—The writ in favour of an adjudger will be in similar terms, but under the proper modification; and a writ of clare constat from Chancery in favour of the vassal's heir, who has obtained decree against the unentered heir apparent of his superior, will be in similar terms as applied to the style of such a writ; and if the writ is by the Prince or the mediate over superior, the necessary alterations will be made.

(a) Incompetent since 1st October 1874; see note (a) to section 104, *ante*, p. 201.

106. *Lands to be held temporarily of the Crown or mediate Superior (a).*—The lands and others contained in such writ to be so obtained shall be holden of the Crown (b) or the mediate over superior, as in the vice of

the unentered immediate superior, while and so long as he and his successors, the immediate superiors thereof, shall remain unentered, and thereafter until a new entry in favour of the vassal or his successors shall become requisite.

(a) This section merely re-enacts 10 and 11 Vict. c. 48, sec. 10, which took effect from and after 30th September 1847.

As to the object of this section and the repeal operated by the Conveyancing Act, see note (a) to section 104, *ante*, p. 201.

(b) Including Her Majesty and the Prince; see interpretation clause (section 3, paragraph 5), *ante*, p. 6.

107. *The party in right of the Superiority may lodge a Minute tendering relinquishment of his right, and if accepted by the Petitioner the Lord Ordinary may interpose his authority (a).—When a petition shall be presented as aforesaid (b) praying for warrant of service and for decree against any person so having a right (c) to the superiority of any lands, and not having completed his feudal title thereto, whether the annual reddendo shall be above or below the value or amount of five pounds sterling, it shall be competent for him, at any time before expiration of the days of intimation, or before interim decree shall have been extracted as aforesaid, to lodge, as part of the proceedings under such petition, a minute, signed by himself or by his mandatory or agent duly authorized by him in writing, stating that he tenders relinquishment of the right of superiority which he holds on apparen-
cy in favour of the petitioner and his heirs and successors, and such minute shall be in the form or as nearly as may be in the form No. 1. of Schedule (BB.) hereto annexed; and if the petitioner shall, by himself or his counsel or agent, subscribe or endorse upon such minute an acceptance of the same in the form or as nearly as may be in the form No. 2. of Schedule (BB.) hereto annexed, the Lord Ordinary is hereby authorized and required, on the petitioner's motion, to interpose his authority to such minute and acceptance, and to decern and declare the right of superiority thus relinquished to be extinguished, to the effect of making the petitioner and his successors in the said lands hold the lands as vassals immediately of and under the superior of the relinquished superiority in permanency and by the tenure and for the reddendo by and for which such relinquished superiority was held, the decree so to be pronounced to be in the form or as nearly as may be in the form No. 3. of Schedule (BB.) hereto annexed; and the said decree, when extracted, and recorded (d) in the appropriate register of sasines, shall entitle the petitioner and his foresaids to apply for an entry to such superior accordingly as his immediate superior; and in the renewed investiture to be obtained by the petitioner under the authority of the said decree, the tenendas and reddendo contained in the title deeds of the relinquished superiority shall be inserted in room of those contained in the investiture of the petitioner's predecessor or author, and the lands shall be held by himself and his successors, according to the tenure of the relinquished superiority, in all time thereafter; and the writ in the petitioner's favour*

may be expressed in one or other of the forms given in Schedule (AA.) hereto annexed (e); but nothing herein contained shall be held as rendering it imperative on the petitioner to accept of the offered relinquishment, and to take the place of his immediate superior, it being hereby provided that if he prefers it he shall be entitled to refuse the same, and to complete his title by entry from the Crown (f), or the mediate over superior, as in the vice of his immediate superior.

(a) This section merely re-enacts 10 and 11 Vict. c. 48, sec. 11, which took effect from and after 30th September 1847.

As to the object of the section and the repeal operated by the Conveyancing Act, see note (a) to section 104, *ante*, p. 201.

(b) *Viz.*, in sections 104 and 105, *ante*, pp. 200 and 205.

(c) See note (f) to section 104, *ante*, p. 201-2.

(d) A warrant of registration was necessary from and after 31st December 1868; see section 141, *post*.

(e) Schedule (AA.) is printed *ante*, p. 204.

(f) Including Her Majesty and the Prince; see interpretation clause (section 3, paragraph 5), *ante*, p. 6.

SCHEDULE (BB.)

No. 1.

Form of Minute of Relinquishment of Superiority by Apparent Heir (a).

Minute of Relinquishment by _____ as heir apparent of _____ in the
lands after-mentioned in the Petition at the instance of [*here name and
describe the petitioner*].

I, A. B., eldest lawful son [*or whatever relation he may be*] and nearest and lawful heir apparent of C. D., the person last infeft in the superiority of the lands of [*here describe the lands fully*], which right of superiority is holden immediately of and under the Crown [*or other over superior, as the case may be*], do absolutely and gratuitously [*or if any price paid, say, in consideration of £ _____ sterling to be paid to me*], relinquish and renounce the superiority of the said lands to which I hold right as heir apparent aforesaid in favour of the petitioner and his successors in the said lands. In witness whereof, &c. [*To be signed by the party, or by his ndatory or agent duly authorized in writing, and duly tested.*]

No. 2.

Minute of Acceptance of above Relinquishment (a).

I accept relinquishment in terms of this minute. [*To be signed by the petitioner, or his counsel or agent.*]

No. 3.

Decree of Lord Ordinary following on the above Minutes (a).

The Lord Ordinary interpones his authority to the minute of relinquishment lodged by the respondent, and decerns and declares the right of superiority thereby relinquished to be extinguished to the effect of giving right to the petitioner and his successors to hold the lands and others described in the petition immediately of and under the party who is superior of the feu now given up and extinguished, and by the tenure and for the reddendo by and for which the relinquished feu was held, and decerns and appoints the decree to be extracted hereon to be recorded in the register of sasines.

(a) Incompetent since 1st October 1874; see note (a) to section 104, *ante*, p. 201.

108. *Over Superior's rights not to be extended or affected (a).*—The investiture thus completed upon the forfeiture of such heir apparent, or upon the relinquishment of the superiority by such heir apparent, and acceptance by the petitioner, shall in all respects, and to all intents and purposes, be as effectual as if such apparent heir had completed his titles to the superiority, and thereafter conveyed the same to the petitioner, and the latter, after completing his titles under the over superior, had resigned *ad remanentiam* in his own hands: Provided always, that the title so completed shall not in any respect extend the interests of such over superior, and that he shall be entitled to no more than the casualties, whether taxed or untaxed, to which he would have been entitled if such apparent heir had remained his vassal.

(a) This section merely re-enacts 10 and 11 Vict. c. 48, sec. 12, which took effect from and after 30th September 1847.

As to the object of this enactment and the repeal operated by the Conveyancing Act, see note (a) to section 104, *ante*, p. 201.

109. *Vassal obtaining or accepting Forfeiture or Relinquishment of Superiority to be liable for its value, but Forfeiture or Relinquishment not to infer Representation (a).*—In the case of such forfeiture or relinquishment of superiority by any apparent heir in manner above mentioned, the vassal obtaining or accepting the same, and making up titles under the over superior, shall be liable, but subject always to retention of expenses as aforesaid, for the value of the said superiority to the said heir apparent, or any person in his right, or having interest, as accords of law; and such forfeiture or relinquishment by such heir apparent shall not infer a passive representation on his part, nor any liability for the debts of the person last infeft therein, beyond the price, if any, which he may receive for such forfeiture or relinquishment; and the vassal, if he accepts thereof, shall

not be accountable in any case for more than the value or price of the forfeited or relinquished right.

(a) This section merely re-enacts 10 and 11 Vict. c. 48, sec. 13, which took effect from and after 30th September 1847.

As to the repeal operated by the Conveyancing Act, see note (a) to section 104, *ante*, p. 201.

110. *Mode of relinquishing Superiorities (a).*—In order to facilitate still further the extinguishing of mid-superiorities not defeasible by the vassal (*b*), it shall be competent to any subject superior, whether himself entered with his superior or not, and whatever the annual value of the reddendo may be, to relinquish his right of superiority in favour of his immediate vassal, by granting a deed of relinquishment in the form or as nearly as may be in the form of No. 1. of Schedule (CC.) hereto annexed; and on the deed of relinquishment being accepted by the vassal, by an acceptance written on such deed in the form or as nearly as may be in the form No. 2. of Schedule (CC.) hereto annexed, and being followed by a writ of investiture by the over superior as herein-after provided (*c*), also written upon the deed of relinquishment, and on such deed, with the acceptance and writ of investiture written thereon, whether dated prior or subsequent to the commencement of this Act, and warrant of registration on behalf of the vassal, also written thereon (*d*), being thereafter recorded in the appropriate register of sasines, the superiority so relinquished shall be held to be extinguished, and the vassal and his successors in the lands shall hold the same as immediate vassals of the over superior by the tenure and for the reddendo by and for which such relinquished superiority was held, and the vassal and his foresaids shall be entitled to apply for an entry to such over superior accordingly as his immediate superior; and such relinquishment by a superior who shall not have completed his title to the superiority relinquished shall not infer a passive representation on his part, nor any liability for the debts of the person last infest therein, beyond the price or consideration, if any, which he may receive for such relinquishment.

(a) This section merely re-enacts, with slight additions, the provisions of 21 and 22 Vict. c. 76, sec. 23, which took effect from and after 1st October 1858.

The object of the section was to provide a simple mode by which mid-superiorities might be voluntarily relinquished in favour of the vassals.

It seems doubtful whether the provisions of the Conveyancing Act operate as a repeal of the present section. An essential part of the forms here prescribed is a writ of investiture by the over superior; and if such a writ is to be regarded as a writ by progress within the meaning of section 4 of the Conveyancing Act, it is now incompetent. As the proviso at the end of that section specifies several writs which may still be competently granted, and as a writ of investiture

is not one of these, it is thought that such a writ could not competently be granted after 1st October 1874.

In any case, this section should be regarded as superseded by section 6 of the Conveyancing Act, which provides a simple mode of merging an estate of property in an estate of superiority. A superior who is willing to relinquish his estate of superiority has only to convey it by an ordinary disposition to his vassal, who after taking infeftment can consolidate his estate of property with his newly acquired estate of superiority by executing and recording a minute of consolidation. As to the mode by which the vassal can obtain infeftment on the disposition, when granted by an heir who has made up no title, see section 10 of the Conveyancing Act.

(b) As to the meaning of defeasible, see note (c) to section 104, *ante*, p. 201.

(c) Viz., in section 111, *post*, p. 111–112.

(d) A warrant of registration was not required under the corresponding section of the Act of 1858.

SCHEDULE (CC.)

No. 1.

Deed of Relinquishment of Superiority (a).

I, *A.B.*, immediate lawful superior of all and whole [*here describe the lands*], do hereby absolutely and gratuitously [*or in consideration of the sum of* pounds paid to me, *or, if the superiority is entailed*, contained in the (*specify bank*) subject to the orders of the Court of Session], relinquish and renounce my right of superiority of the said lands in favour of *C.D.*, my immediate vassal, and his successors therein, and declare that the said lands shall no longer be held of me as superior, but shall be held of my immediate lawful superior in all time to come. In witness whereof [*insert testing clause in the usual form*].

No. 2.

Acceptance by Vassal written on Deed of Relinquishment (a).

I, *C.D.*, the immediate vassal in the lands described in this deed, accept the relinquishment of the superiority of the said lands. In witness whereof [*insert a testing clause in the usual form*].

(a) Apparently incompetent since 1st October 1874; see note (a) *ante*, p. 214.

111. *Investiture by Over Superior (a).*—On the application of the vassal in the relinquished superiority, and on production by him of the deed

of relinquishment, and acceptance thereof, whether dated prior or subsequent to the commencement of this Act, and on his paying or tendering such duties and casualties as may be exigible by the over superior, the over superior shall be bound to receive the vassal as his immediate vassal by writ of investiture in or as nearly as may be in the form of No. 3. of Schedule (CC.), to be written on the deed of relinquishment, and the tenendas and reddendo contained in the title deeds of the relinquished superiority shall be inserted therein in room of those contained in the former investiture held under the relinquished superiority; and where the lands are held of the Crown (*b*), such writ of investiture shall be obtained from Chancery, in the same manner as is herein-before (*c*) directed in regard to confirmations written on the deeds confirmed: Provided always, that the party applying for such writ of investiture shall lodge or cause to be lodged in the office of the presenter of signatures a draft of the proposed writ in the same manner as when a Crown writ is applied for under the provisions of this Act (*d*); and the deed of relinquishment with the acceptance thereon shall be officially transmitted to the Director of Chancery (*e*), and the Crown writ of investiture engrossed thereon, and recorded in the same manner in which Crown writs are to be recorded (*f*), and shall thereafter be delivered to the vassal or his agent, on payment of the same fees as are now payable for recording a writ or charter in Chancery; and the investiture completed upon such relinquishment of the superiority shall be as effectual as if the granter of the deed of relinquishment had completed his title to the superiority, and had thereafter conveyed the same to the vassal, and the latter, after having completed his titles under the over superior, had resigned *ad remanentiam* in his own hands (*g*): Provided always, that the investiture so completed shall not in any respect extend the rights or interests of such over superior, and that he shall be entitled to no more than the duties and casualties, taxed or untaxed, to which he would have been entitled if the granter of the deed of relinquishment had remained or entered as his vassal.

i

(*a*) This section re-enacts 21 and 22 Vict. c. 76, sec. 24, which took effect from and after 1st October 1858.

As to the object of this section, and the repeal apparently operated by the Conveyancing Act, see note (*a*) to section 110, *ante*, p. 214.

(*b*) Including Her Majesty and the Prince; see interpretation clause (section 3, paragraph 5), *ante*, p. 6.

(*c*) Viz., in section 81, *ante*, p. 163.

(*d*) See section 64, *ante*, p. 146.

(*e*) See sections 72 and 78, *ante*, pp. 154 and 160.

(*f*) See section 87, *ante*, p. 176.

(*g*) That is to say, as effectual as if consolidation had been properly effected according to the mode formerly in use.

SCHEDULE (CC.)

No. 3.

Crown Writ of Investiture written on Deed of Relinquishment (a).

Victoria, &c. We, lawful superior of the lands contained in this deed, accept and receive *C.D.*, and his heirs and successors whomsoever [*or otherwise, according to the destination contained in the title to the lands*], in place of *E.F.*, and his heirs and successors, in virtue of the above deed of relinquishment, and acceptance thereof; to be holden the said lands by the said *C.D.* and his foresaids of us, &c. [*specify the tenendas and reddendo contained in the titles of the relinquished superiority; also insert or refer to the conditions and limitations, if any, under which the lands are held by the vassal, as in No. 1. Schedule (U.)*]. Given at Edinburgh, the day of in the year .

[*Signed by the Director of Chancery, or his depute or substitute.*]

NOTE.—If the writ is by the Prince or the mediate over superior, the necessary alteration will be made.

(a) Apparently incompetent since 1st October 1874; see note (a) to section 110, *ante*, p. 214.

112. *Applications of Price of Entailed Superiorities—Price of Superiorities of Entailed Lands may be charged on the Entailed Estate (a).*—Where the right of superiority, or the dues and casualties payable in respect thereof, forfeited or relinquished under the provisions of this Act, shall form part of an estate held under a deed of strict entail, such forfeiture or relinquishment shall not operate as a contravention of such entail, anything contained in the deed of entail or any Act of Parliament notwithstanding; and the price agreed to be paid for such superiority so forfeited or relinquished, if any, shall be consigned by the vassal in one of the chartered banks in *Scotland*, subject to the orders of the Court of Session, and shall be applicable and applied in such and the like manner and to such and the like purposes as purchase money or compensation coming to parties having limited interests is made applicable under the Lands Clauses Consolidation (*Scotland*) Act, 1845, or any Act altering or amending the same, or under the Act of the 11th and 12th *Victoria*, chapter 36, intituled “*An Act for the Amendment of the Law of Entail in Scotland*,” or under an Act of the 16th and 17th *Victoria*, chapter 94, intituled “*An Act to extend the Benefits of the Act of the 11th and 12th years of Her present Majesty for the Amendment of the Law of Entail in Scotland*,” and for that purpose it shall be competent to the heir of entail in possession to present a summary petition to the Court of Session, praying to have the price so applied, and such petition shall set forth the names, designations, and places of abode of those heirs of entail whose consents would be required to the execution of an instrument of disentail; and on such petition being served on such parties, and being intimated in the minute book and on the walls in common

form, it shall be competent for the Court to direct the price to be applied to such of the said purposes as may appear to them to be most expedient : Provided always, that where the sums agreed to be paid for all the superiorities which form part of an entailed estate shall not in all exceed the sum of two hundred pounds, such sum shall belong to the heir in possession, and the Court shall direct such sums to be paid to him : Provided also, that the price of such superiorities may be applied by the heir in possession to such purposes and in such manner as may be authorized by any private Act of Parliament authorizing the sale of the entailed estate or any portion thereof, and the application of the price thereof ; and where the lands of which the superiority is so forfeited or relinquished shall be held by the vassal under a deed of strict entail, the vassal in such lands shall be entitled and he is hereby authorized to grant a bond and disposition in security over the entailed estate for the full amount of the price paid for the forfeited or relinquished superiority, together with all expenses incurred in the relative proceedings, including the estimated expense of such bond and disposition in security ; and his granting such bond and disposition in security shall not operate as a contravention of such entail, anything contained in the deed of entail or any Act of Parliament notwithstanding : Provided always, that such bond and disposition in security shall be granted with the consent of those heirs of entail whose consents would be required to the execution of an instrument of disentail of the lands, or under the authority of a judicial warrant or decree of the Court of Session pronounced on a summary petition by the heir of entail in possession praying for such warrant ; and the proceedings under such petition shall be the same or as nearly as may be the same as the proceedings under a petition to charge an entailed estate with provisions to younger children, as authorized by the said Acts of the 11th and 12th *Victoria*, chapter 36, and 16th and 17th *Victoria*, chapter 94 : Provided always, that it shall not be necessary that such petition be publicly advertised in the *Gazette* or any newspaper, but that service and intimation only shall be made in common form.

(a) This section re-enacts 21 and 22 Vict. c. 76, secs. 25 and 26, which took effect from and after 1st October 1858, but with an addition rendering its provisions applicable to forfeited as well as to relinquished superiorities from and after 31st December 1868.

It is apparently repealed from and after 1st October 1874 ; see note (a) to section 104, *ante*, p. 201, and note (a) to section 110, *ante*, p. 214.

113. *Providing for payment in lieu of Casualties of Superiority in case of Lands conveyed for Religious Purposes (a).*—Where no agreement shall have been made or shall be made with the superior of lands of the nature referred to in the 26th section of this Act (b) for a periodical or other payment in lieu of the casualty or composition payable by law or in terms of the investiture upon the entry of heirs and singular successors, or where the casualty and composition shall not have been taxed, and where by law and

under the terms of the investiture composition as on the entry of a singular successor would be or but for the provisions of the said section would have been payable upon the entry of any party or parties as successors to the party or parties in whose name the titles shall have been expedite and recorded as provided by the said section, it shall be lawful for such superior, at the death of the existing vassal in such lands, and at the expiration of every period of twenty-five years thereafter, so long as such lands shall belong to or be held for behoof of such congregation or society or body of men, to demand and take from such congregation or society or body of men or other party or parties to whom such lands may have been or shall be feued or conveyed, or by whom the same may be held for their behoof, a sum corresponding to the casualty or composition, if any such shall in the circumstances be due, which would have been payable upon the entry of a singular successor therein; and such payments shall be in full of all casualties of entry and composition payable to the superior for or furth of such lands, while the same shall remain the property or be held for behoof of such congregation or society or body of men, and the superior shall have all such and the like preference and execution for the recovery of such sums as superiors have for the recovery of casualties of superiority according to law: Provided always, that where such casualty or composition shall not have been taxed in the investiture, and the lands so feued or conveyed shall not be situated in a town or village or in the immediate vicinity thereof, the casualty or composition payable therefor shall be held to be the annual rent or annual value of the lands so feued or conveyed, if let as an agricultural subject at the time when such casualty or composition shall become due and exigible in virtue of this Act.

(a) This section merely re-enacts, with verbal alterations, 13 Vict. c. 13, sec. 2, which came into operation on 17th May 1850.

Its object is to regulate the casualties payable by a body of trustees holding lands for religious or educational purposes.

This section has been superseded since 1st October 1874 by section 5 of the Conveyancing Act, which is applicable to trustees holding lands for any purposes whatever.

(b) That is to say, lands held by trustees for religious or educational purposes. See *ante*, p. 88.

114. *Writs of Confirmation, &c., by Subject Superiors to be tested (a).*—Writs of confirmation, and writs of resignation, and writs of clare constat, and all other writs or charters granted in terms of this Act by subject superiors, shall be authenticated in the form required by the law of *Scotland* in the case of ordinary conveyances.

(a) This section merely re-enacts, with verbal alterations, 23 and 24 Vict. c. 143, sec. 40, which took effect from and after 1st October 1860.

The chief object of the enactment was to remove doubts which were entertained after the passing of the Titles to Land Act of 1858, as to whether the writs by subject superiors, which were directed by that Act to be engrossed on conveyances, viz., writs of resignation and writs of confirmation, required to be tested in the usual way.

Under section 4 of the Conveyancing Act writs are no longer competent; but the present enactment remains in force as regards all other writs and charters by subject superiors. The formalities required in the execution of all deeds have, however, been relaxed by sections 38, 39, and 41 of the Conveyancing Act.

115. *Charters and Writs to operate as Confirmation of all prior Conveyances, &c. (a).*—Every charter and writ, whether from the Crown or from a subject superior of whatever description shall operate a confirmation of the whole prior deeds and conveyances necessary to be confirmed in order to complete the investiture of the person obtaining such writ or charter.

(a) This section consolidates and enlarges, from and after 31st December 1868, the provisions of several prior statutes, viz., 10 and 11 Vict. c. 48, sec. 7, which took effect from and after 30th September 1847, and under which a charter of confirmation operated as a confirmation of all prior titles without the necessity of specifying them; 21 and 22 Vict. c. 76, secs. 6 and 7, which came into operation on 1st October 1858, and under which writs of confirmation had the same effect; 21 and 22 Vict. c. 76, secs. 8 and 9, which came into operation on 1st October 1858, and under which writs of resignation had the same effect; and 23 and 24 Vict. c. 143, sec. 39, which took effect from and after 1st October 1860, and under which charters of resignation, charters of adjudication, and charters of sale had the same effect.

The object of this enactment was to facilitate the completion of a feudal title.

The section is, however, virtually repealed from and after 1st October 1874 by section 4 of the Conveyancing Act, which abolishes charters and writs by progress, and renders infeftment equivalent to entry with the superior.

116. *Stamp Duty on Writs of Confirmation, &c. (a).*—The stamp duty chargeable on writs of confirmation, writs of resignation, writs of clare constat, and writs of investiture (b), granted or to be granted in virtue of this Act, except Crown writs, and on writs of acknowledgment under

“The Registration of Leases (*Scotland*) Act” (*c*), shall be the same as that chargeable on charters of confirmation, charters of resignation, and precepts of clare constat by subject superiors (*d*), and the said duty may be paid by means of adhesive stamps to be provided for that purpose by the Commissioners of Inland Revenue, who may from time to time make such rules as may seem fit for regulating the use of such stamps, and for insuring the proper cancellation thereof.

(*a*) This section merely re-enacts, with the addition of the clause excepting Crown writs, the provisions of 23 and 24 Vict. c. 143, sec. 41, which took effect from and after 1st October 1860.

The words printed in small type must be regarded as repealed from and after 1st October 1874, section 4 of the Conveyancing Act having abolished charters and writs by progress.

(*b*) As to the incompetency of writs of investiture, see *note* (*a*), *ante*, p. 214.

(*c*) 20 and 21 Vict. c. 26, sec. 8, printed *post*.

(*d*) Viz., 5s.; see the Stamp Act of 1870 (33 and 34 Vict. c. 97).

117. (*a*) *Heritable Securities to form Moveable Estate; except where conceived in favour of Heirs, excluding Executors, and quoad fiscum.—Not to belong to Husband jure mariti, nor to Wife jure relicte.—Nor to be computed in legitim* (*b*).—From and after the commencement of this Act (*c*) no heritable security (*d*) granted or obtained either before (*e*) or after that date shall, in whatever terms the same may be conceived, except in the cases herein-after provided (*f*), be heritable as regards the succession of the creditor in such security, and the same, except as herein-after provided (*f*), shall be moveable as regards the succession of such creditor (*g*), and shall belong after the death of such creditor to his executors or representatives *in mobilibus*, in the same manner and to the same extent and effect as such security would, under the law and practice now in force, have belonged to the heirs of such creditor (*h*): Provided always, that where any heritable security is or shall be conceived expressly in

favour of such creditor, and his heirs or assignees or successors, excluding executors, the same shall be heritable as regards the succession of such creditor, and shall after the death of such creditor belong to his heirs in the same manner and to the same extent and effect as is the case under the existing law and practice in regard to heritable securities: And provided also, that where a creditor in any existing or future security recorded, or on which an instrument (*i*) has followed recorded in the register of sasines, shall desire to exclude executors, it shall be competent for him to do so by executing a minute in the form or as nearly as may be (*k*) in the form of Schedule (DD.) hereto annexed, and recording the same (*l*) in the appropriate register of sasines, and upon such minute being recorded the security to which it refers shall be heritable in the manner and to the extent and effect herein-before provided; and further, provided that where in any existing or future security which has not been recorded, or followed by an instrument recorded in the register of sasines, or where in the case of any conveyance or deed of or relating to such security not recorded in the register of sasines, the creditor shall desire to exclude executors, it shall be competent for him to do so by endorsing a minute, in the form or as nearly as may be in the form of Schedule (DD.) hereto annexed, on the security or on the deed or conveyance thereof in his favour which has not been recorded as aforesaid, and recording the same, along with such security or with such deed (*l*) or conveyance as the case may be, in the appropriate register of sasines, and upon such security or deed or conveyance, as the case may be, and minute being so recorded the security shall be heritable in the manner and to the extent and effect herein-before provided; and, where executors shall be excluded in the security, or by minute recorded as aforesaid, the security shall continue to be heritable as regards the succession of the creditor for the time holding such heritable security, until the exclusion of executors shall be removed, which it shall

be lawful for such creditor to do either by executing a minute in the form or as nearly as may be (*k*) in the form of Schedule (EE.) hereto annexed, and recording the same in the appropriate register of sasines, whereupon the security shall become moveable as regards the succession of such creditor, as provided by this Act, or by assigning, conveying, or bequeathing such security to himself or to any other person, without expressing or repeating such exclusion, and upon such assignation, conveyance, or bequest taking effect (*m*), the security shall become moveable as regards the succession of such creditor or other person as the case may be, as provided by this Act: And further (*n*), provided that all heritable securities shall continue, and shall be heritable *quoad fiscum* (*o*), and as regards all rights of courtesy and terce competent to the husband or wife of any such creditor, and that no heritable security, whether granted before or after marriage, shall to any extent pertain to the husband *jure mariti*, where the same is or shall be conceived in favour of the wife, or to the wife *jure relictæ*, where the same is or shall be conceived in favour of the husband, unless the husband or relict has or shall have right and interest therein otherwise; declaring, nevertheless, that this provision shall in no way prejudice the rights and interests of wife or husband, or of the creditors of either, in or to the by-gone interest and annual rents due under any such heritable security and *in bonis* of the husband or wife respectively prior to his or her death (*p*); and further provided, that where legitim is claimed on the death of the creditor no heritable security shall to any extent be held to be part of the creditor's moveable estate in computing the amount of the legitim (*q*).

(*a*) Here commences the part of the Act, extending to section 136 inclusive, which deals with redeemable rights or heritable securities. This is a re-enactment, with considerable additions, of 8 and 9 Vict. c. 31; 10 and 11 Vict. c. 50; and 17 and 18 Vict. c. 62.

(*b*) This section is a new enactment applicable to the succession of all heritable creditors dying after the commencement of the Act, viz., from and after 31st December 1868.

The object of the section is to render securities over land moveable or personal estate, as regards the succession of the creditor in such securities. By the common law previously in force, money lent on the security of land was regarded as heritable succession, thus devolving exclusively on the creditor's heir-at-law. The present enactment places all heritable securities in the same position as personal bonds *quoad* the succession of the creditor; but it does not affect the succession of the debtor, whose heir-at-law thus remains primarily liable for the amount of debts secured on heritage.

It may be here pointed out, although the laws relating to mortmain are not applicable to land in Scotland, that by 33 and 34 Vict. c. 34 it is enacted that it shall be lawful for all corporations and trustees in the United Kingdom holding moneys in trust for any public or charitable purpose to invest such moneys on any real security authorised by or consistent with the trusts on which such moneys are held, without being deemed thereby to have acquired or become possessed of any land within the meaning of the laws relating to mortmain, or of any prohibition or restraint against the holding of land by such corporations or trustees contained in any charter or Act of Parliament.

(c) Viz., from and after 31st December 1868. The enactment applies only to successions opening since that date. Thus, in the case of *Brown v. Macdonald*, 28th January 1870, 8 Macph. 439, a creditor holding a bond and disposition in usual form having died intestate in June 1868, survived by her only son who died in January 1869 without having served heir to his mother or made up a title to the bond, the Court held that the statute had not retrospective effect so as to regulate the succession of the mother, and that her heir-at-law had right to the bond, to the exclusion of the executors of both the mother and the son. Had the son survived till the commencement of the Conveyancing Act, he would have acquired a personal right to the bond without the necessity of serving as heir or making up any title, and the bond would therefore have belonged to his representatives *in mobilibus*.

(d) As to what is covered by the words "heritable security," see interpretation clause (section 3, paragraph 10), *ante*, p. 7.

Section 30 of the Conveyancing Act declares, *inter alia*, that the provisions and enactments contained in the present section "shall be taken to apply and shall apply as nearly as may be to real burdens upon land; provided always, that securities by way of ground annual, whether redeemable or irredeemable, shall continue to be heritable as regards the succession of the persons in right thereof."

(e) If a creditor holding a bond obtained prior to 31st December 1868 in the usual form desires that the succession thereto should still be heritable, he requires to execute and record a minute in the form of Schedule (DD.), as prescribed by the second proviso of this section.

(f) Viz., in the provisoes of this section.

(g) The word creditor extends to and includes the party in whose favour an heritable security is granted, and his successors in right thereof, the word successors including heirs, disponees, assignees, legal as well as voluntary, executors and representatives; see interpretation clause (section 3, paragraphs 11 and 1), *ante*, pp. 8 and 5.

(h) So that where the creditor executes a will dealing with his moveable estate alone, the heritable security will be thereby conveyed; and where the creditor dies intestate, the heritable security will belong to his next of kin.

(i) Including both an instrument of sasine and a notarial instrument; see interpretation clause (section 3, paragraph 9), *ante*, p. 7.

(k) There must be no real deviation from the form prescribed.

(l) With warrant of registration thereon; see section 141, *post*.

(m) An assignation or conveyance *inter vivos* takes effect on delivery thereof; an assignation or conveyance *mortis causa* takes effect on the death of the testator; and a bequest takes effect when the interest of the legatee becomes vested.

(n) This proviso is designed to put heritable securities in the same position as personal bonds under the Act 1661, c. 32, *quoad fiscum* and *quoad the jus mariti and jus relictae*.

(o) Heritable securities are exempted by this proviso from forfeiture to the Crown by single escheat.

For the purposes of the Acts relating to inventory duty, heritable securities and personal bonds secluding executors were declared moveable estate, and appointed to be included in the inventory thereof, by 23 and 24 Vict. c. 15, sec. 6, and 23 and 24 Vict. c. 80, secs. 1 and 8.

(p) Under the Apportionment Act of 1870 (33 and 34 Vict. c. 35) all periodical payments are to be considered as accruing from day to day, and apportionable in respect of time accordingly.

(q) In this respect heritable securities still differ from personal bonds.

Page 225, end of note (h).

Thus where a person left a will in the English form, disposing of his moveable estate, and also a trust - settlement in the Scotch form, conveying his whole heritable estate, both deeds having been executed in the year 1872, it was held that a bond secured over lands in Scotland fell under the former, and not under the latter deed. — *Guthrie and Others*, 23d Oct. 1880, 8 R. 34.

Page 225, between note (o) and note (p).

The proviso excluding the *jus mariti* applies to heritable securities to which married women may have succeeded, as well as to heritable securities in which they are the original creditors. — *Hodge v. Hodge*, 22d Nov. 1879, 7 R. 259.

Page 225, end of note (q).

In computing the amount of legitime, mortgages over land in England are held to be part of the creditor's moveable estate. — *Monteith v. Monteith's Trs.*, 28th June 1882, 19 Scot. Law Rep. 740; 9 R. 982. The rubric of the latter report erroneously states that such mortgages are personal under the Titles to Land Consolidation Act as well as at common law. In point of fact the Court held that Act to have no application to such securities, which, however, are moveable or personal estate according to the law of England. There is also a misprint in the interlocutor of the Inner House in both reports: the word "deducted" ought to be "included."

SCHEDULE (DD.)

Form of Minute excluding Executors in an Heritable Security.

I, *A.B.*, [*here name and design the creditor*] hereby exclude executors from the bond and disposition in security [*or other security, here specify it by date, &c., and if recorded in register of sasines specify the date of such recording, or if followed by an instrument so recorded specify the date of recording such instrument (a), and (b) if the security has not been completed by infestment, here say, the within (c) bond and disposition in security (or assignation, or other deed or conveyance thereof, as the case may be)*]. In witness whereof, &c. [*insert testing clause in usual form (d)*].

(a) If the grantor is not the original creditor in the bond executors should be excluded from both the bond and the assignation or other deed by which he acquired right to the bond.

(b) For the word "and" read "or."

(c) The minute in this case being written on the bond or other deed.

(d) As to the requisites of the testing clause, see section 38 of the Conveyancing Act.

SCHEDULE (EE.)

Form of a Minute of Removal of the Exclusion of Executors in an Heritable Security.

I, *A.B.*, [*here name and design the creditor*], hereby remove the exclusion of executors contained in [*or endorsed on*] the bond and disposition in security [*or assignation, or otherwise, as the case may be, specifying the same as in schedule (DD.) or contained in the minute of exclusion of executors (specify date of minute and of recording the same in the register of sasines)*]. In Witness Whereof, &c. [*insert a testing clause in usual form (a)*].

(a) See note (d) *supra*.

118. (a) *Bonds and Dispositions in Security may be granted in the form No. 1. of Schedule (FF.)* (b)—From and after the commencement of this Act it shall be lawful and competent for any person entitled to grant an heritable security by way of bond and disposition in security to grant the same in the form or as nearly as may be (c) in the form No. 1. of Schedule (FF.) hereto annexed (d); and the registration (e) in the appropriate register of sasines of such bond and disposition in security, or of any bond and disposition in security, granted according to any of the forms competent or in use prior to the commencement of this Act (f), shall be as effectual and operative to all intents and purposes as if such bond and disposition in security had contained, in the case of lands not held by burgage tenure (g) an obligation to infest *a me vel de me* (h), procuratory of resignation (i), and precept of sasine, and in the case of lands held by burgage tenure an obligation to infest *more burgi* and a procuratory of resignation (g), all in the words and form in use prior to the 30th day of September 1847 (k), and as if sasine or resignation and sasine, as the case may be (g), had been duly made, accepted, and given thereon in favour of the original creditor, and an instrument of sasine or of resignation and sasine (g), as the case may be, in favour of such creditor had been duly recorded in the appropriate register of sasines of the date of the registration of the said bond and disposition in security as aforesaid (l).

(a) This is one of the amended sections substituted by the Amendment Act of 1869 ; see note (a) *ante*, p. 1, and note (a) *ante*, p. 3. The amendment consists in the insertion of the words “in the appropriate register of sasines” in the second clause of the section.

(b) This section merely re-enacts, with verbal alterations, the provisions of 10 and 11 Vict. c. 50, sec. 1, which took effect from and after 30th September 1847.

The object of the section is to introduce a short form of a bond and disposition in security, the registration of which is to operate as an infeftment of the creditor. This is the only heritable security of which a form is provided by the Act, other deeds being rarely used in modern practice for the purpose of constituting an heritable security. Section 134, however, declares that the whole provisions, enactments, and forms relative to bonds

and dispositions in security shall apply as nearly as may be to all heritable securities, unless in so far as they may be inapplicable to the form or objects of such securities. It is therefore competent in all heritable securities to use the short clauses given in the schedule in place of the long clauses formerly in use, and to obtain infeftment by registration instead of sasine.

(c) There must be no real deviation from the form here provided.

(d) The form given in the schedule differs in two particulars from the form given by the Act of 1847, viz., in omitting the clause consenting to registration in the register of sasines, and in providing an alternative clause as to the creditor's representatives to whom the bond is to be taken payable, according as the creditor desires his succession to be heritable or moveable.

(e) A warrant of registration is now necessary ; see section 141.

(f) Section 135 provides that the forms in use prior to 1st October 1845 may still be used.

(g) Section 25 of the Conveyancing Act abolishes the distinction between estates in land held burgage and estates in land held feu, *inter alia*, in so far as regards the conveyances relating thereto and the completion of titles ; and section 26 declares that if a clause of resignation is inserted in a conveyance of land formerly held burgage, it shall be held *pro non scripto*. Instruments of resignation and sasine appear to be no longer competent ; see note (a) *ante*, p. 52.

(h) As to the effect of the Conveyancing Act on an alternative holding, see note (c) *ante*, p. 26.

(i) Entry by resignation being incompetent under section 4 of the Conveyancing Act, a procuratory or clause of resignation would be useless in any conveyance of lands.

(k) Viz., the date at which the corresponding section of the Act of 1847 came into operation.

(l) That is to say, the creditor is infeft as at the date of registration.

SCHEDULE (FF.)

No. 1.

Form of a Bond and Disposition in Security.

I, *A.B.*, [*here name and design the grantor,*] grant me to have instantly borrowed and received from *C.D.*

[*here name and design the creditor*] the sum of [*insert the sum*] sterling; which sum I bind myself, and my heirs, executors, and representatives whomsoever, without the necessity of discussing them in their order, to repay to the said *C.D.*, his executors [*or his heirs, excluding executors*] or assignees whomsoever, at the term of [*here insert the date and place of payment (a)*], with a fifth part more of liquidate penalty in case of failure, and the interest of said principal sum at the rate of

per centum per annum from the date hereof to the said term of payment, and half-yearly, termly, and proportionally thereafter during the not-payment of the same, and that at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment of the said interest at the term of next, for the interest due preceding that date, and the next term's payment thereof at

following, and so forth half-yearly, termly, and proportionally thereafter during the not-payment of the principal sum, with a fifth part more of the interest due at each term of liquidate penalty in case of failure in the punctual payment thereof. And in security of the personal obligation before written, I dispoise to and in favour of the said *C.D.* and his foresaids, heritably, but redeemably, as after mentioned, yet irredeemably in the event of a sale by virtue hereof, all and whole [*here describe or refer as in Schedule (E.) (b) or Schedule (G.) (c) to the lands*] (A), and that in real security to the said *C.D.* and his foresaids of the whole sums of money above written, principal, interest, and penalties; and I assign the rents (*d*), and I assign the writs, and I grant warrandice, and I reserve power of redemption, and I oblige myself for the expenses of assigning and discharging this security; and on default in payment I grant power of sale; and I consent to registration for preservation and execution. In witness whereof, &c. [*insert a testing clause in usual form*].

- (A) If the lands are held under any real burdens, conditions, provisions, or limitations, insert

them here or refer to them in or as nearly as the circumstances may require in the form of Schedule (D.) (e).

(a) It is well to specify here a bank in which the repayment is to be made; see note (g) to section 119, *post*, p. 236.

(b) For Schedule (E.) substitute Schedule O. of the Conveyancing Act; see note (a) *ante*, p. 40.

(c) Printed *ante*, p. 45.

(d) If the security comprehends feu-duties, here add the words "with the feu duties and casualties."

(e) Printed *ante*, p. 38.

119. (a) *Explanation of Clauses in Schedule (FF.)*
No. 1.—Clauses reserving right of Redemption, and of obligation to pay expense of Assignment or Discharge and Power of Sale, valid, &c. (b).—The import of the clauses of the form of No. 1. of the said Schedule (FF.) occurring in any bond and disposition in security, whether granted before or after the commencement of this Act, shall be as follows, *videlicet*, the clause obliging the grantor to pay the amount due under the bond, principal, interest, and penalty, to the creditor, his heirs, executors, or assignees, shall, unless where executors are excluded, be held to import an obligation to pay the same to the creditor and his representatives *in mobilibus* and his assignees, and where there is or shall be such exclusion, to the creditor and his heirs and assignees (c); the clause disposing the lands to such creditor and his forebears heritably shall, unless where executors are excluded, be held to import a disposition of such lands to such creditor and his representatives *in mobilibus* and his assignees, and, where there is or shall be such exclusion, to such creditor and his heirs and assignees, in security, in manner specified in the bond and disposition in security, with all the rights and powers at present competent to a creditor and his heirs under such a security (c);

the clause of assignation of rents shall be held to import an assignation to the creditor and his representatives *in mobilibus* or his heirs, as the case may be, and to his assignees, to the rents to become due or payable from and after the date from which interest on the sum in the security commences to run, in the fuller form generally in use prior to the 30th day of September 1847 (*d*), including therein a power to the creditor and his foresaids to insure all buildings against loss by fire, and on default in payment to enter into possession of the lands disposed in security, and uplift the rents thereof, or to uplift the rents thereof if the lands are not disposed in security (*e*), and to make all necessary repairs on the buildings, subject to accounting to the debtor for any balance of rents actually recovered beyond what is necessary for payment to such creditor and his foresaids of the sums, principal, interest, and penalty, due to him or them under such security, and of all expenses incurred by him or them in reference to such possession, including the expenses of management, insurance, and repairs (*f*); and the clause of assignation of writs shall be held to import an assignation to the creditor and his foresaids to writs and evidents to the same effect as in the fuller form generally in use in a bond and disposition in security, with power of sale, prior to the 30th day of September 1847 (*d*); and the clause of warrandice shall be held to import absolute warrandice as regards the lands and the title-deeds thereof, and warrandice from fact and deed as regards the rents; and clause consenting to registration for preservation and execution shall have the meaning and effect assigned to such clause in the 138th section of this Act; the clauses reserving right of redemption, and obliging the grantor to pay the expenses of assigning or discharging the security, and, on default in payment, granting power of sale, shall have the same import, and shall be in all respects as valid, effectual, and operative as if it had been in such bond and disposition in security specially provided and declared that the lands and others thereby disposed

should be redeemable by the grantor from the grantee, at the term and place of payment, or at any term of Whitsunday or Martinmas thereafter, upon premonition of three months, to be made by the grantor to the grantee personally, or at his dwelling place, if within Scotland, and if furth thereof at the time, then at the office of the keeper of the record of edictal citations within the General Register House, Edinburgh, in presence of a notary public and witnesses, and that by payment to him of the whole principal sum payable under the bond and disposition in security, interest due thereon, and liquidated expenses and termly failures corresponding thereto, if incurred, and in case of his absence or refusal to receive the same, by consignment thereof in the bank specified in the security, if any bank shall be so specified (*g*), and if not, then in one or other of the banks in Scotland incorporated by Act of Parliament or royal charter, having an office or branch at the place of payment, to be made furthcoming on the peril of the consigner, the place of redemption to be within the office of such bank or branch thereof; and as if it had been thereby further provided and declared that any discharge and renunciation, disposition and assignation, or other deed necessary to be granted by the grantee upon the grantor making payment and redeeming as aforesaid, and also the recording thereof, should always be at the expense of the grantor; and as if it had been thereby further provided and declared that if the grantor should fail to make payment of the sums that should be due by the personal obligation contained in the said bond and disposition in security, within three months after a demand of payment intimated to the grantor, whether of full age or in pupillarity or minority, or although subject to any legal incapacity, personally or at his dwelling place if within Scotland, or if furth thereof, at the office of the keeper of the record of edictal citations above mentioned, in presence of a notary public and witnesses (*h*), and which demand for payment may be in or as nearly as may be (*k*) in the form

of No. 2. of Schedule (FF.) hereto annexed, and a copy thereof certified by such notary public in the form of No. 3. of Schedule (FF.) hereto annexed (*l*), or where such demand has been intimated to more persons than one, a copy so certified of the demand intimated to one of such persons, with a certificate by such notary public that a similar demand has been intimated to the other persons, and stating the names and designations of such persons, and the dates and places of intimation to them, shall be sufficient evidence of such demand (*i*), then and in that case it should be lawful to and in the power of the grantee, immediately after the expiration of the said three months, and without any other intimation or process at law, to sell and dispose, in whole or in lots, of the said lands and others, by public roup at Edinburgh or Glasgow, or at the head burgh of the county within which the said lands and others, or the chief part thereof, are situated, or at the burgh or town sending or contributing to send a member to Parliament (*m*), or at the burgh or town which may have previously adopted "The General Police and Improvement (Scotland) Act, 1862," or part thereof (*n*), which, whether within or without the county, shall be nearest to such lands or the chief part thereof, on previous advertisement, stating the time and place of sale, and published once weekly for at least six weeks subsequent to the expiry of the said three months, in any newspaper published in Edinburgh or in Glasgow (*o*), and in every case in a newspaper published in the county in which such lands are situated, or if there be no newspaper published in such county, then in any newspaper published in the next or a neighbouring county, and a certificate by the publishers of such newspapers for the time shall be *prima facie* evidence of such advertisement (*p*), the grantee being always bound, upon payment of the price, to hold count and reckoning with the grantor for the same, after deduction of the principal sum secured, interest due thereon, and liquidated penalties corresponding to both which may be incurred, and all

expenses attending the sale, and for that end to enter into articles of roup, to grant dispositions containing all usual and necessary clauses, and in particular a clause binding the grantor of the said bond and disposition in security in absolute warrandice of such dispositions, and obliging him to corroborate and confirm the same, and to grant all other deeds and securities requisite and necessary by the laws of Scotland for rendering such sale or sales effectual, in the same manner and as amply in every respect as the grantor could do himself; and as if it had been thereby further provided and declared that the said proceedings should all be valid and effectual, whether the debtor in the said bond and disposition in security for the time should be of full age, or in pupillarity or minority, or although he should be subject to any legal incapacity, and that such sale or sales should be equally good to the purchaser or purchasers as if the grantor himself had made them, and also that in carrying such sale or sales into execution it should be lawful to the grantee to prorogue and adjourn the day of sale from time to time as he should think proper, previous advertisement of such adjourned day of sale being given in the newspapers above mentioned once weekly for at least three weeks; and as if the grantor had bound and obliged himself to ratify, approve of, and confirm any sale or sales that should be made in consequence thereof, and to grant absolute and irredeemable dispositions of the lands and others so to be sold to the purchaser, and to execute and deliver all other deeds and writings necessary for rendering their rights complete.

(a) This is one of the sections substituted by the Amendment Act of 1869, to be read and construed as if it had originally been the 119th section of the Consolidation Act. See note (a) *ante*, p. 1, and note (a) *ante*, p. 3.

The differences between the repealed and the substituted section are (1) that in the substituted section the words "where there is or shall be such exclusion" have been substituted for the words "where there is or shall be *no* such exclusion," the word "*no*" having been inserted by mistake in the original section; (2) that in the substituted section the words "to insure all buildings

against loss by fire, and " are placed before instead of after the power to enter into possession ; (3) that in the substituted section there have been inserted after the reference to the form of No. 3. of the schedule the words " or where such demand has been intimated " to more persons than one, a copy so certified of the demand intimated to one of such persons, with a certificate by such notary public that a similar demand has been intimated to the other persons, and stating the names and designations of such persons, and " the dates and places of intimation to them ;" and (4) that in the substituted section there have been inserted after the words " member to Parliament " the words " or at the burgh or town which " may have previously adopted ' The General Police and Improvement (Scotland) Act, 1862,' or part thereof."

(b) This section re-enacts, with some additions, the provisions of 10 and 11 Vict. c. 50, secs. 2 and 3, which took effect from and after 30th September 1847. The additions are specified in the following notes.

The main object of the section is to abbreviate the form of bonds and dispositions in security, the words here used to express the import of the short statutory clauses being very much the words of the fuller clauses formerly in use.

(c) This clause is an addition rendered necessary by the changes effected by section 117, *ante*, p. 221.

(d) That is to say, the date from and after which 10 and 11 Vict. c. 50, introducing the short clauses, took effect.

(e) The lands are not disposed in security in the case of such heritable securities as bonds of annuity or the old form of heritable bond. See *Juridical Styles*, 3d ed., vol. i., p. 291.

(f) This clause is much fuller than the corresponding clause in the Act of 1847, which was in the following terms:—"The clause of assignation of rents to become due or payable shall be held to import an assignation to rents from and after the term from which interest on the sum in the bond commences to run in the fuller form now generally in use, including therein a power to the creditor, on default in payment, to enter into possession of the lands disposed in security and uplift the rents thereof, subject to accounting to the debtor for any balance of rents actually recovered beyond what is necessary for payment of the creditor."

The action of poinding the ground "is not competent to proprietors or even to possessors though not strictly proprietors, as adjudgers, liferenters, or other real creditors who possess under their different titles; for there is a natural impropriety in providing the ground of lands possessed by the poidner himself."—*Ersk. iii.* 50, 11. Accordingly this action is not competent to a creditor holding an *ex facie* absolute disposition qualified by a back letter declaring

Page 235, line 4
from foot.

For "providing"
read "poinding."

Poining of the ground in security for interest current but not yet due is competent, but payment cannot be demanded till the stipulated term arrives.—*Stewart v. Gibson's Tr.*, 10th Dec. 1880, 8 R. 270. The effect of an action of poining of the ground is to attach only those moveables which are actually on the ground at the time of the serving of the summons. — *Urquhart v. Anderson*, 16th June 1883, 20 Scot. Law Rep. 670. But it puts a *nexus* on such moveables, and interpellates the owner from allowing any other person to acquire any right to or over them. — *Lyons v. Anderson*, 21st Oct. 1880, 8 R. 24.

ADDITIONAL NOTE.

In the recent case of *Stewart and Others v. Brown and Others*, Nov. 17, 1882, 10 R. 192, the pursuers sought to reduce a sale under a bond, on the ground that the sale had not been carried through in conformity with the statutory provisions. In the circumstances of the case the Court found it unnecessary to dispose of the merits of the objections stated by the pursuers; but opinions were expressed to the effect that requisition and premonition of sale ought to be renewed wherever a considerable period has been

it to have been granted in security merely; *Scottish Heritable Security Co. v. Allan*, 14th Jan. 1876, 3 Rettie 333. But it is competent to a creditor in a bond and disposition in security, even although he has obtained a decree of maills and duties and in virtue thereof drawn the rents; *Henderson v. Wallace*, 7th Jan. 1875, 2 Rettie 272.

As to the rights of creditors in heritable securities where the debtor's estate has been sequestrated under the Bankruptcy Act, see section 55 of the Conveyancing Act.

(g) The words "in the bank specified in the security, if any "bank shall be so specified, and if not, then," are an addition to the corresponding clause of the Act of 1847.

The present Act makes no provision for clearing the record where a discharge cannot be obtained; but this omission is remedied by section 49 of the Conveyancing Act.

(h) (i) The words between these letters are an addition to the corresponding clause of the Act of 1847.

(k) There must be no real deviation from the form here provided.

(l) The present Act first introduced short forms of intimation, requisition, and protest. As to the old forms, see *Juridical Styles*, 4th ed., vol. i., p. 750.

(m) (n) The words between these letters are an addition to the corresponding clause of the Act of 1847.

(o) The option here given of advertising the sale in a newspaper published in Glasgow is an addition to the corresponding clause of the Act of 1847.

(p) This is an addition to the corresponding clause of the Act of 1847, designed to obviate the necessity of preserving among the title deeds numerous bulky newspapers containing the statutory advertisements.

SCHEDULE (FF.)

No. 2.

Form of Schedule of Intimation, Requisition, and Protest.

I, A.B. [design him], procurator for C.D. [design creditor in right of the security], in whose favour the bond and disposition in security after mentioned was granted, [or, if he is not the original creditor, now in

right of the bond and disposition in security after mentioned], do hereby give notice to you *E.F.* [*design debtor under the security*] that payment is now required of the sum of £ being the principal sum due under the bond and disposition in security dated and recorded , granted by you *E.F.* [*or by G.H.*] in favour of the said *C.D.* [*or original creditor*], [*if C.D. is not the original creditor, add, to which C.D. has now right by various transmissions, but these transmissions need not be particularly specified*], and of the sum of £ , being the interest due at present on the said principal sum, with such further sum of interest as shall accrue on the said principal sum till paid. And I further give you notice, that if at the expiry of the period of three months from the date hereof the sums, principal and interest, and liquidate penalty incurred and to be incurred, of which payment is now required, shall not be paid in terms of the said bond and disposition in security, then the said *C.D.*, or the person or persons who may then be in right of the said bond and disposition in security, may proceed to sell the lands and others [*or subjects*] thereby conveyed in the manner provided by the "Titles to Land Consolidation (Scotland) Act, 1868," and with all powers and privileges conferred on or competent to creditors under bonds and dispositions in security by that Act. This I do at on the day of before and in presence of *L.M.*, notary public, and *N.O.* and *P.Q.* [*design them*], witnesses to the premises, called and required, and hereto with me subscribing.

(Signed) *A.B.*

N.O., witness.

P.Q., witness.

No. 3.

Certificate by Notary on Copy of foregoing Schedule.

I certify that what is above written is a true copy.

(Signed) *L.M.*, Notary Public.

allowed to elapse without the property having been brought to sale, and that although the only persons entitled to receive intimation and requisition are the debtor and (in the event of the debtor having ceased to be owner) the present owner of the property, yet there is a duty incumbent on a first bondholder to see that the proper preliminaries precede any sale by him, and that as little injury as possible be done to the claims of postponed bondholders. Where a sale is adjourned it is a common practice to make the adjournment in blank rather than to a date fixed at the time of the adjournment; but this practice does not appear to be perfectly safe. When the adjournment is so long as to be practically a new exposure the advertisements should, *ob majorem cautelam*, be for six weeks.

120. *Securities may be registered during lifetime of Grantee, or Title completed after his death (a).—* Heritable securities (*b*) whether dated before or after the commencement of this Act, may be registered (*c*) in the appropriate register of sasines at any time during the lifetime of the grantee, and shall in competition be preferred according to the date of the registration thereof: Provided always, that if an heritable security has not been so registered in the lifetime of the grantee (*d*), such heritable security shall be as full and sufficient warrant for completion of the title in favour of the party having right thereto, as if it had been a bond and disposition in security, containing precept of sasine and other clauses, in the ordinary form in use prior to the 30th day of September 1847 (*e*), which title may be completed as after provided (*f*), or by service of notarial instrument, as the circumstances of the case may require.

(*a*) This section merely re-enacts, with slight alterations, the provisions of 10 and 11 Vict. c. 50, sec. 6 (applicable to bonds and dispositions in security), which took effect from and after 30th September 1847; as extended to other heritable securities by 17 and 18 Vict. c. 62, which took effect from and after 31st July 1854.

The object of the section is to provide a simple mode by which the creditor in an heritable security, or those in his right, may obtain infestment.

(*b*) As to the deeds included in the expression heritable securities, see interpretation clause (section 3, paragraph 10), *ante*, p. 7.

(*c*) A warrant of registration is now required; see section 141.

(*d*) It can rarely happen that a heritable security is not registered in the lifetime of the grantee, as the obviously proper course is to register it as soon as it has been granted.

(*e*) Viz., the date from and after which the corresponding section of 10 and 11 Vict. c. 50, took effect.

(*f*) Viz., in section 130, *post*, 253.

121. *Sale carried through in terms of this Act to be valid to the purchaser (a).—* Any sale duly carried through in terms of the heritable security (*b*) and of

this Act, or partly in terms of any Act now in force and partly in terms of this Act if the proceedings shall have been begun before the commencement of this Act, shall be as valid and effectual to the purchaser as if made by the grantor of the security himself, and that whether the grantor shall have died before or after such sale, and without the necessity of confirmation by him or his successors, and notwithstanding that the party debtor in the security and in right of the lands at the time shall be in pupillarity or minority, or subject to any legal incapacity: Provided always, that nothing herein contained shall be held to affect or prejudice the obligation of the grantor and his successors to execute, or the right of the creditor or purchaser to require the grantor and his successors to execute, any deed or deeds which, independently of this enactment, would at common law be necessary for rendering the sale effectual, or otherwise completing in due form the titles of such purchaser.

(a) This section merely re-enacts, with slight additions, the provisions of 10 and 11 Vict. c. 50, sec. 7, which took effect from and after 30th September 1847.

Its object is to give a valid title to a purchaser of lands sold under a power of sale in a heritable security.

(b) See interpretation clause (section 3, paragraph 10), *ante*, p. 7.

122. *Creditors selling to count and reckon for the Surplus of the Price and to consign the same in the Bank (a).*—The creditor (b), upon receipt of the price, shall be bound to hold count and reckoning therefor with the debtor (c) and postponed creditors, if any such there be, or with any other party having interest, and to consign the surplus which may remain, after deducting the debt secured, with the interest due thereon and penalties incurred and expenses in reference to the possession of the estate if such creditor has been in possession, including expense of insurance, repairs, and management (d), and whole expenses attending such sale, and after paying all previous in-

cumbrances and the expense of discharging the same, in one or other of the said banks (e), or in a branch of any such bank, in the joint names of the seller and purchaser, for behoof of the party or parties having best right thereto; and the particular bank in which such consignment is to be made shall be specified in the articles of roup.

(a) This section merely re-enacts, with slight additions, the provisions of 10 and 11 Vict. c. 50, sec. 8, which took effect from and after 30th September 1847.

Its object is to provide for the proper application of any surplus remaining after satisfying the creditor who has carried through the sale.

(b) Including the party in whose favour the heritable security has been granted, and his successors in right thereof; see interpretation clause (section 3, paragraph 11), *ante*, p. 8.

(c) Including the debtor's successors as well as the debtor himself; see interpretation clause (section 3, paragraph 12), *ante*, p. 8.

(d) See explanation of clause assigning the rents in section 119, *ante*, p. 231.

(e) Viz., banks in Scotland incorporated by Act of Parliament or royal charter.

123. *On Sale and Consignation of Surplus, Lands to be disencumbered of the Security (a).*—Upon a sale being carried through in terms of this Act, and upon consignation of the surplus of the price, if any be, as aforesaid (b), the disposition by the creditor to the purchaser shall have the effect of completely disencumbering the lands and others sold, of all securities and diligences posterior to the security of such creditor, as well as of the security and diligence of such creditor himself.

(a) This section merely re-enacts 10 and 11 Vict. c. 50, sec. 9, which took effect from and after 30th September 1847.

Its object is to give a clear title to a purchaser of lands sold by an heritable creditor, on the consignation of any surplus.

The present Act contains no provision for the case of there being no surplus; but this omission has been remedied by section 48 of the Conveyancing Act.

(b) Viz., in section 122, *ante*, p. 239.

124. *Securities to be transferred in the form prescribed.—When Conveyance of Heritable Security is contained in a general Deed of Conveyance, the whole such Deed need not be recorded* (a).—Where an heritable security (b), whether dated before or after the passing of this Act, has been constituted by infeftment (c), whether such infeftment has been taken by recording the security or an instrument thereon in the appropriate register of sasines in terms of this Act or any of the repealed Acts (d), or by any mode competent or in use prior to the 30th day of *September* 1847 (e), in the appropriate register of sasines, the right of the creditor (f) therein may be transferred, either in whole or in part, by an assignation or other conveyance in the form, or as nearly as may be (g) in the form of Schedule (GG.) hereto annexed; and on such assignation or conveyance being recorded in the appropriate register of sasines, the said security or part of such security, as the case may be, shall be transferred to the assignee as effectually as if such security had been disposed and assigned, and the disposition and assignation or conveyance had been followed by sasine duly recorded according to the law and practice prior to the 1st day of *October* 1845 (h) at the date of recording such assignation or conveyance; and such assignee or disponent shall thereupon be held to be as fully entered as if he had obtained a renewal of the investiture in his favour, according to the law and practice in use before that date (i): Provided always, that where the assignation or conveyance of an heritable security constituted as aforesaid is contained in any other conveyance or deed, it shall not be necessary to record the whole of such conveyance or deed (k), but it shall be sufficient to expedite and record in the appropriate register of sasines a notarial instrument in the form or as nearly as may be (g) in form of Schedule (HH.) hereto annexed, and upon such notarial instrument being recorded the person or per-

sons expeding the same shall be in the same position as if the assignation or conveyance of the heritable security on which it proceeds had been itself recorded as of the date of recording the said instrument.

(a) This section re-enacts, with some additions necessitated by the more recent statutes, the provisions of 8 and 9 Vict. c. 31, sec. 1, which took effect from and after 1st October 1845.

Its object is to substitute a short and simple mode of transferring heritable securities on which infestment has followed, in place of the disposition and assignation and instrument of sasine thereon which were formerly used for the purpose. See Juridical Styles, 3d ed., vol. i, p. 352.

Section 30 of the Conveyancing Act, *inter alia*, extends the provisions of the present section to the case of a transfer of any real burden upon land.

(b) See interpretation clause (section 3, paragraph 10), *ante*, p. 7.

(c) Section 130 provides for the case where infestment has not been taken.

(d) Viz., the Acts repealed by section 4 of the present Act.

(e) Viz., the date from and after which 10 and 11 Vict. c. 50 took effect.

(f) Including the party in whose favour the heritable security is granted, and his successors in right thereof; see interpretation clause (section 3, paragraph 11), *ante*, p. 8.

(g) There must be no real deviation from the form here provided.

(h) Viz., the date from and after which 8 and 9 Vict. c. 31 took effect.

(i) That is to say, as if he had been entered with the debtor's superior; see Bell's Lectures on Conveyancing, 1st ed., p. 1084. Under section 4 of the Conveyancing Act the same effect is given to all infestments where the holding is not expressed to be *de me*.

(k) Under the corresponding section of the Act of 1845 this privilege was restricted to the case of the conveyance or deed having been granted for further purposes and objects, or conveying other properties. See also section 17, *ante*, p. 53.

SCHEDULE (GG.)

Form of Assignation of a Bond and Disposition in Security constituted by Infestment.

I, A.B. [name and design cedent,] in consideration of the sum of [insert sum] now paid to me by C.D.

[*name and design assignee*], do hereby assign and dispo-
 ne, to and in favour of *C.D.*, and his executors
 [or heirs excluding executors] and assignees whomso-
 ever, a bond and disposition in security [or heritable
 bond, or other security, as the case may be,] dated the
 [insert the date, and when recorded, add, and recorded
 as after mentioned], for the sum of [insert sum],
 granted by *E.F.* [*name and design debtor*] in my
 favour, [or in favour of *G.H.*, as the case may be,] with
 interest from the [insert date], and also all and whole
 [describe or refer as in Schedule (E.) (a) or Schedule (G.)
 (b), as the case may be, to the lands] (A), all as specified
 and described in the said bond and disposition in
 security and instrument of sasine thereon, [if the bond
 is recorded omit the words "and instrument of sasine
 thereon,"] recorded in the [here specify the register of
 sasines in which the sasine or bond is registered] on the
 [specify date of registration] (B). In witness whereof,
 &c. [insert a testing clause in usual form].

(Signed) *A.B.*

G.H., witness.

I.K., witness.

NOTE.—(A) Where the assignation is made under
 any real burdens, conditions, provisions, or
 limitations, here insert or refer to them in or
 as nearly as the circumstances of the case
 may require in the form of Schedule (D.) (c)

(B) If the assignation is granted, not by the
 original creditor in the security, but by a
 person to whom the security has already
 been assigned, or in whom it has become
 vested by succession or diligence, the con-
 veyance will shortly narrate here the title or
 series of titles by which the grantor of the
 conveyance has right to it.

(a) For Schedule (E.) to the Consolidation Act substitute Sche-
 dule O. of the Conveyancing Act; see note (a) *ante*, p. 40.

(b) Printed *ante*, p. 45.

(c) Printed *ante*, p. 38.

SCHEDULE (HH.)

Form of Instrument in favour of an Assignee to an Heritable Security following on a deed granted for further purposes or objects (a).

At there was by [or on behalf of] (b) A.B. of Z., presented to me, Notary Public subscribing, a bond and disposition in security [or other security (c), or extract, as the case may be], dated [insert date, and where recorded in the register of sasines insert date of recording, and specify register of sasines, and where sasine has been expedited thereon add, and sasine thereon, recorded in the (specify register of sasines) on the (insert date)], granted by C.D. [insert designation] in favour of E.F. [insert designation], by which bond and disposition in security [or, as the case may be] the said C.D. bound and obliged himself [insert the personal obligation so far as necessary, and disposition of the lands in security, with the description of them, and also all real burdens, &c., if any, all as set forth at full length or by reference in the bond and disposition or other security], As also there was presented to me an assignation [or other conveyance or extract], dated [insert date], granted by the said E.F., by which the said E.F. assigned the said bond and disposition in security [or other security, as the case may be], and sums of money and lands therein contained, to the said A.B., and his heirs, executors, and representatives whomsoever [or otherwise, as the case may be, and if the deed be granted in trust, or for specific purposes, add, but in trust always, or for the uses and purposes specified in said assignation, [or otherwise, as the case may be. If the person in whose favour the instrument is taken is not the disponent of the original creditor, but of one who has acquired right to the security, here specify shortly the title or series of titles by which the deceased acquired such right]. Whereupon, &c., as in Schedule (J.) (d) to the end.

(a) The stamp-duty is 5s.

The introductory words of the form of instrument here given are different from those used in the corresponding instrument under the Act of 1845.

(b) That is to say, the word "by" is to be used when the deed is presented to the notary by the party himself; and the words "on behalf of" are to be used when it is presented by his agent.

(c) As to real burdens, see section 30 of the Conveyancing Act.

(d) Printed *ante*, p. 56.

125. (a) *Completion of Title of Executors or Executor-nominate, or Disponee or Legatee of an Heritable Security, or of Heir where Executors excluded.*—Upon the death of any creditor in right of an heritable security, constituted by infeftment as aforesaid, from which executors shall not have been excluded, who shall die leaving a testamentary or *mortis causa* deed or writing naming executors, or disposing or bequeathing his moveable estate to disponees, or disposing or bequeathing the security to legatees, it shall be competent for the executors or disponees, duly confirmed, or for the legatees, as the case may be, to complete a title thereto by a writ of acknowledgment to be granted in their favour by the debtor in the said security infeft in the lands comprehended therein, in or as nearly as may be in the form set forth in Schedule (II.) hereto annexed; and when the executors or disponees (being more than one) shall be appointed under such deed or writing for holding the moveable estate of the deceased in trust for the purposes of the deed or writing, and not wholly for their own beneficial interest, it shall be competent (when not expressly precluded by the terms of the deed or writing) to take the said writ in favour of the said executors or disponees, and the survivors or survivor of them; and where any creditor has died or shall die before the commencement of this Act in right of such an heritable security, or where any creditor shall die thereafter in right of such an heritable security, from which executors shall have been excluded, it shall be competent for the heir of such creditor to complete a title to the security by a writ of acknowledgment as aforesaid; and on such writ being recorded in the appropriate register of sasines, the executors, disponees, or legatees, or heirs, as the case may be, in whose favour such writ has been granted, shall be vested with the full right of the creditor in such security, and shall be held to be entered with the superior in like manner and to the same effect as the original creditor himself.

(a) This section is now repealed by section 63 of the Conveyancing Act, which substitutes an amended section, to be read and construed as if it had originally been section 125 of the Consolidation Act.

Page 245, after
note (d).

ADDITIONAL

NOTE.

The words "by which the deceased acquired such right," occurring at the end of the schedule, should have been "by which such right was acquired," as the schedule is applicable to deeds *inter vivos*, as well as to deeds granted *mortis causa*.

SCHEDULE (II.) (a).

*Form of Writ of Acknowledgment by a person (b) in-
feft in Lands, in favour of the Executors or Execu-
tor nominate, or of the Disponees or Disponee,
Legatees or Legatee, or heir of the Creditor in an
Heritable Security affecting such Lands (c).*

I, *A.B.* [*insert name and designation of grantor*], hereby acknowledge *C.D.* [*insert name and designation of executors or executor (d), or of disponees or disponee, legatees or legatee, or heir, and where the executors or disponees, being more than one, are appointed to hold the estate of the deceased in trust for the purposes of the testamentary or other deed or writing, and not wholly for their own beneficial interest, here add, if desired by the party, and not expressly precluded by the terms of said deed or writing, and the survivors or survivor of them*] as executor [*or execu-
tors*] nominated by *E.F.* [*insert name of grantor of testamentary deed or other writing*] in his will [*or trust disposition and settlement, or other testamentary deed or writing*], dated [*insert date*], [*or as disponee of the moveable estate of the said deceased E.F., or as legatee of the bond and disposition in security after mentioned and sums thereby secured, or otherwise in terms of the deed or writing, or as the case may be, specifying the deed as above, or as heir of the said deceased E.F., specifying the relationship of the heir where the writ is granted to an heir*], to be in right of a bond and disposition in security [*or heritable bond, or as the case may be*] dated [*insert date, and, where recorded in register of sasines, add, and recorded as after mentioned*], for the sum of [*insert sum*] granted by [*insert name and designation of debtor*] in favour of [*insert name and designation of the original creditor, and in cases where executors are excluded insert the destination at length or refer to the recorded minute of exclusion*], and sasine thereon [*or where the bond and disposition itself is recorded in the register of sasines, omit*

the words "sasine thereon"] recorded in the [specify the register of sasines in which the sasine or bond is recorded] on the [specify date of registration], over all and whole [describe or refer as in Schedule (E.) (e) or Schedule (G.) (f) to the lands], [if the will or settlement, &c., be granted in trust or for specific purposes, add, but in trust always for the uses and purposes specified in said deed or writing, or as the case may be. If the person or persons in whose favour the writ is granted is not the executor, or are not the executors, &c., of the original creditor (g), here specify shortly the title or series of titles by which the deceased acquired right.] In witness whereof [insert a testing clause in usual form (h).

(Signed) *A.B.*

G.H., witness.

I.K., witness.

(a) The amended section substituted by the Conveyancing Act in place of section 125 of the Consolidation Act leaves this schedule intact.

(b) The debtor in the security.

(c) The stamp duty for this writ is 5s.

(d) As an executor is not entitled to obtain this writ without having been confirmed, his confirmation should be here specified.

(e) For Schedule (E.) of the Consolidation Act, substitute Schedule O. of the Conveyancing Act; see note (a) *ante*, p. 40.

(f) Printed *ante*, p. 45.

(g) That is to say, if such persons are the executors, disponees, legatees, or heirs of a person who had acquired right to the security.

(h) As to the form of testing clause, see note (d) to Schedule (J.), *ante*, p. 56.

126. *Completion of Title of Executors, &c. of Creditor dying intestate (a).*—Upon the death of any

creditor (*b*) who shall die intestate in right of an heritable security (*c*) constituted by infeftment as aforesaid (*d*), from which executors shall not have been excluded, it shall be competent to the executors duly confirmed to such deceased creditor to complete a title to such security by expeding and recording an instrument under the hands of a notary public in the form or as nearly as may be (*e*) in the form set forth in Schedule (JJ.) hereto annexed; and when the executors (being more than one) duly confirmed as aforesaid shall not be entitled to the deceased's moveable estate wholly for their own beneficial interest, it shall be competent to take such notarial instrument in favour of the said executors and the survivors or survivor of them; and on such instrument being recorded in the appropriate register of sasines such executors or executor shall be held to be vested with the full right of the creditor in such security, and to be entered with the superior in the same manner and to the same effect as the original creditor himself.

(*a*) This section is a new enactment, thus taking effect from and after 31st December 1868.

Its object is to provide a form of notarial instrument by which the representatives *in mobilibus* of a creditor who has died intestate may make up a title to a heritable security on which infeftment has followed.

(*b*) Including the party in whose favour the heritable security is granted, and his successors in right thereof; see interpretation clause (section 3, paragraph 11), *ante*, p. 8.

(*c*) See interpretation clause (section 3, paragraph 10), *ante*, p. 8. The provisions of this section are now applicable to real burdens; see section 30 of the Conveyancing Act.

(*d*) Viz., in section 124, *ante*, p. 241.

(*e*) There must be no real deviation from the form here provided.

SCHEDULE (JJ.)

*Form of Instrument in favour of an Executor or Heir (a)
of a Creditor who died intestate in right of an Heritable Security (b).*

At there was by [or on behalf of] (c) *A.B.* of *Z.* (d), &c. [as in Schedule (HH.) (e) down to and including the description of the lands and the reference, if any, to real burdens.] As also there was presented to me testament dative of the said deceased *E.F.*, expedé before the commissary of the county of on the [insert date of confirmation], whereby the said *A.B.* was ordained and confirmed executor dative of the said deceased *E.F.* [if there are more than one executor dative appointed the necessary alterations to be made] [or a decree of general (or special) service in favour of the said *A.B.* as (specify character in which heir (a) was served) to the said *E.F.*, dated (insert date of service) expedé before the Sheriff of and recorded in Chancery the day of], whereby the said *A.B.* acquired right to the said bond and disposition in security [or as the case may be, and if the person in whose favour the instrument is taken is not the executor or heir of the original creditor, but of one who has acquired right to the security, here specify shortly the title or series of titles by which the deceased acquired such security]. Whereupon, &c. [as in Schedule (J.) (f) to the end].

(a) As to the case of an heir, see section 128.

(b) The stamp duty is 5s.

(c) That is to say, the word "by" is to be used when the deed is presented by the party himself; and the words "on behalf of" are to be used when it is presented by his agent.

(d) If there are more executors than one, and they are not entitled to the moveable estate wholly for their own beneficial interest, the words "and the survivors and survivor of them" may here be added.

(e) *Ante*, p. 244.

(f) *Ante*, p. 56.

127. (a) *Executor-nominate or Donee mortis causa may complete Title by Notarial Instrument.*—Upon the death of any creditor in right of an heritable security constituted by infestment as aforesaid, from which executors shall not have been excluded, and who shall die leaving a testamentary or *mortis causa* deed or writing naming executors, or disposing or bequeathing his moveable estate to donees, or disposing or bequeathing the security to legatees, it shall be competent for the executors or donees, duly confirmed, or for the legatees, as the case may be, to complete a title thereto by expeding and recording in the appropriate register of sasines an instrument under the hands of a notary public in the form or as nearly as may be in the form of Schedule (KK.) hereto annexed; and when such executors or donees or assignees or legatees, being more than one, shall not be entitled to such security wholly for their own beneficial interest, it shall be competent to take such notarial instrument in favour of such executors or donees or assignees or legatees, and the survivors and survivor of them, unless such a destination be expressly excluded by the terms of the conveyance or deed or writing; and where any creditor has died or shall die before the commencement of this Act in right of such an heritable security and leaving a *mortis causa* conveyance thereof or of his heritable estate generally, or where any creditor shall die thereafter in right of such an heritable security from which executors shall have been excluded, and leaving such a *mortis causa* conveyance, or a testamentary deed or writing within the meaning of the 20th section of this Act, it shall be competent to the grantee or legatee under such *mortis causa* conveyance or testamentary deed or writing to complete a title to the security by notarial instrument as aforesaid; and on such instrument being so recorded the executors, donees, legatees, or grantees, as the case may be, in whose favour such instrument has been expedited shall be vested with the full right of the creditor in such security, and shall be held to be entered with the superior in like manner and to the same effect as the original creditor himself.

(a) This section is now repealed by section 64 of the Conveyancing Act, which substitutes an amended section, to be read and construed as if it had originally been section 127 of the Consolidation Act.

SCHEDULE (KK.) (a.)

Form of Instrument in favour of the Executors or Executor nominate, or of the Donee or Legatee of a Creditor in right of an Heritable Security (b).

At _____ there was by [or on behalf of] (c) A.B. of, &c. [as in Schedule (HH.) (d) down to and including description of lands and the reference to real burdens]. As also there was presented to me a testa-

ment [or general disposition, or trust disposition and settlement, or other testamentary deed or writing, or extract, or otherwise, as the case may be], dated [insert date], granted by the said deceased *E.F.*, [if necessary, say, who died after (or before as the case may be) the commencement of the Titles to Land Consolidation Act, 1868 (e)], by which the said *E.F.* nominated the said *A.B.* to be his executor, [or assigned and disposed his whole heritable and moveable estate, or otherwise, as the case may be, or gave and bequeathed his whole moveable estate and effects to the said ^{deceased} (f) *A.B.*; or gave and bequeathed the said bond and disposition in security, and sums therein contained, to the said *A.B.*; and if the deed be granted in trust, or for specific purposes, add, but in trust always, or for the uses and purposes specified in said deed, or otherwise, as the case may be, whereby the said *A.B.* is now in right of said bond and disposition in security (or as the case may be). If the person in whose favour the instrument is taken is not the executor, disponee, assignee, or legatee of the original creditor, but of one who has acquired right to the security, here specify shortly the title or series of titles by which the deceased acquired such security]. Whereupon, &c., [as in Schedule (J.) (g) to the end].

(a) The amended section substituted by the Conveyancing Act in place of section 127 of the Consolidation Act leaves this schedule intact.

(b) The stamp duty is 5s.

(c) The word "by" is to be used when the deed is presented to the notary by the party himself; and the words "on behalf of" are to be used when it is presented by his agent.

If the instrument is to be taken in favour of the survivors or survivor of the parties, this may be done in the same terms as in Schedule (II.), ante, p. 246.

(d) Ante, p. 244.

(e) Viz., 31st December 1868.

(f) The word "deceased" is here inserted by mistake, and it should of course be omitted.

(g) *Ante*, p. 56. As the section of the Consolidation Act authorizing the use of the present form of instrument has been repealed and re-enacted with amendments by the Conveyancing Act, reference should be made to both Acts. The clause will accordingly run thus:—Whereupon this instrument is taken in the hands of *L.M.* [*insert name and designation of notary public*] in the terms of the “Titles to Land Consolidation (Scotland) Act, 1868,” and of “The Conveyancing (Scotland) Act, 1874. In witness whereof, &c.

128. *Form of completing Title of Heir where Executors are excluded* (a).—Where any creditor has died or shall die before the commencement of this Act (b) in right of an heritable security (c) constituted by infestment as aforesaid (d), or where any creditor (e) shall die thereafter in right of such an heritable security from which executors shall have been excluded, it shall be competent for the nearest and lawful heir of such creditor who, according to the present law and practice, would be entitled to succeed to such security, on obtaining a decree of general or special service (f) in the proper character (g), to complete his title thereto by expeding and recording an instrument under the hands of a notary public, in the form or as nearly as may be (h) in the form, adapted to the circumstances, of Schedule (JJ.) hereto annexed (i); and on such instrument being recorded in the appropriate register of sasines, such heir shall be taken to be vested with the full right of the creditor in such security, and to be entered with the superior, in the same manner and to the same effect as the original creditor himself.

(a) This section re-enacts, with alterations and additions rendered necessary by section 117, the provisions of 8 and 9 Vict. c. 31, sec. 4, which took effect from and after 1st October 1845.

Its object is to provide a form of notarial instrument by which an heir may make up a title to a heritable security.

(b) *Viz.*, 31st December 1868.

(c) See interpretation clause (section 3, paragraph 10), *ante*, p. 7. The provisions of this section are now applicable to real burdens; see section 30 of the Conveyancing Act.

(d) Viz, in section 124, *ante*, p. 241.

(e) Including the party in whose favour the heritable security is granted, and his successors in right thereof; see interpretation clause (section 3, paragraph 11), *ante*, p. 8.

(f) A decree of service is still required for the completion of a title in the mode here authorized, although a personal right now vests in the heir by mere survivance, under section 9 of the Conveyancing Act.

(g) Although the character of the heir is not properly stated, this is now of no consequence, provided the heir is in truth entitled to succeed to the heritable security; see section 11 of the Conveyancing Act.

(h) There must be no real deviation from the form here provided.

(i) Printed *ante*, p. 249.

129. (a) *Adjudgers may complete their Title by recording Abbreviate of Adjudication.*—In all cases of adjudication, whether for debt or in implement, or of constitution and adjudication, whether for debt or in implement, in which the adjudger has obtained a decree of adjudication or of constitution and adjudication, in the manner and to the effect provided by this Act, where the subjects contained in such decree are heritable securities, it shall be competent for the adjudger to complete his title to such securities, either by recording the abbreviate of adjudication in the appropriate register of sasines, which registration shall have the same effect as if at the date thereof the adjudger had been entered and infeft on a charter of adjudication, or by recording the said decree in the appropriate register of sasines, in which case he shall be in the same position as if an assignation of such heritable securities had been granted in his favour by the ancestor or person whose estate is adjudged, and as if such assignation had been duly recorded in the appropriate register of sasines at the date of so recording such decree.

(a) This section is repealed by section 65 of the Conveyancing Act, which substitutes an amended section, to be read and construed as if it had originally been section 129 of the Consolidation Act.

130. (a) *Unregistered Security or Assignation to be available to Executors, &c. of Grantee* (b).—In the event of an heritable security (c) from which executors shall not have been excluded, dated before or after the commencement of this Act, not being constituted by infeftment during the lifetime of the grantee,

or of any assignation, dated before or after the commencement of this Act, of a security from which executors shall not have been excluded, but which has been constituted by infeftment, not being completed by infeftment during the lifetime of the assignee, and where such grantee or assignee shall be in life at, or at any time subsequent to, the commencement of this Act (*d*), such security or assignation shall form a warrant for an instrument in the form or as nearly as may be (*e*) in the form of Schedule (MM.) hereto annexed, under the hands of a notary public, being passed upon the same in favour of the executors of the creditor, duly confirmed, whether the same be executors nominate or executors dative, or in favour of the disponees or assignees of such security, or of the moveable estate of such creditor under any deed or conveyance inter vivos or mortis causa, or in favour of any legatees of such security; and where such executors or disponees or assignees, being more than one, shall not be entitled to such security wholly for their own beneficial interest, it shall be competent to take such notarial instrument in favour of such executors or disponees or assignees, and the survivors or survivor of them, unless such a destination be expressly excluded by the terms of the conveyance, or deed, or writing (*f*); and where executors shall be excluded from such security, or the creditor has died before the commencement of this Act (*d*), the security or assignation, as the case may be, shall form a warrant for a notarial instrument as aforesaid in favour of any disponees or assignees or legatees of such security, or of the heritable estate of such creditor under any deed or conveyance by him inter vivos or mortis causa, or under any testamentary deed or writing by him within the meaning of the 20th section of this Act (*g*), or in favour of the heirs of such creditor having right to the security by decree of general or special service as heir to such creditor (*h*); and on such instrument being recorded in the appropriate register of sasines, the executors or disponees, or assignees or legatees or heirs, as the case may be,

in whose favour such instrument is expedite, shall be vested with the full right of the creditor in such security, and shall be held to be entered with the superior in like manner and to the same effect as the original creditor himself (*i*).

(*a*) This is one of the amended sections substituted by the Amendment Act of 1869, to be deemed and be taken to be the 130th section of the principal Act, and to be read and construed as if it had been the original section; see note (*a*) *ante*, p. 1, and note (*a*) *ante*, p. 3.

The amendment consists merely in the insertion of the words "or at any time subsequent to," occurring in the clause "and where such grantee or assignee shall be in life at, or at any time subsequent to, the commencement of this Act," &c.

(*b*) This section is to a large extent a new enactment, thus taking effect from and after 31st December 1868. It is, however, to some extent a re-enactment of 17 and 18 Vict. c. 62, sec. 3, which took effect from and after 31st July 1854, and which provided that where an assignation had not been recorded in the lifetime of the grantee, it should nevertheless be a sufficient warrant for sasine in favour of the party having right thereto.

The object of the section is to provide a form of notarial instrument by which the representatives *in mobilibus* or in heritage, as the case may be, of a creditor who has not taken infeftment may make up a title to heritable security.

(*c*) See interpretation clause (section 3, paragraph 10), *ante*, p. 7; and section 30 of the Conveyancing Act.

(*d*) Viz., 31st December 1868.

(*e*) There must be no real deviation from the form here provided.

(*f*) The preceding part of this section deals with the case of the succession being moveable under the provisions of section 117; while the following clause deals with the case of its being heritable.

(*g*) *Ante*, p. 63.

(*h*) A decree of service is still required for the completion of a title in the mode here authorized, although a personal right now vests in the heir by mere survivance, under section 9 of the Conveyancing Act.

(*i*) Under section 4 of the Conveyancing Act, the same effect is given to all infeftments where the holding is not expressed to be *de me*.

SCHEDULE (MM.)

Form of Instrument on an unrecorded Bond and Disposition in Security, or unrecorded Assignment in favour of the Executor or Donee, or Assignee, or Legatee, or Heir of the Creditor (a).

At there was by [or on behalf of] (b) A.B. [insert designation], presented to me, notary public subscribing, a bond and disposition in security [or other security, or an assignment of the bond and disposition in security after mentioned, or extracts, as the case may be], granted by C.D. [insert designation], and dated [insert date], by which bond and disposition in security the said C.D. bound and obliged himself, [insert the personal obligation and disposition of the lands in security, with the description of them, and also all real burdens, &c., if any, all as set forth at full length or by reference in the bond and disposition in security, or other security, or, in the case of an assignment, say, by which assignment the said C.D. assigned to the said A.B. a bond and disposition in security, or other security, granted by (insert name and designation of grantor of bond) in favour of the said C.D., dated (insert date), and recorded (insert date of recording, and specify register, or in the case of the security having been followed by sasine, say), and sasine thereon, recorded (insert date of recording and specify register), for the sum of (insert sum), and also all and whole (insert the description of the lands and real burdens, &c., or reference thereto, all as contained in the assignment)]; As also there was presented to me [here specify the title or series of titles by which the party acquired right to the bond and disposition in security, or to the assignment, in or as nearly as the circumstances of the case will admit in the form of Schedule (KK.) (c), or in the case of a bond and disposition in security, or other security to heirs excluding executors, &c., or the creditor in which died before the commencement of this Act, say, as also there was presented to me extract decree of the general (or special) service of the said

A.B. as heir (*specify character in which served*) of the said *E.F.* (*here specify date, and date of recording in Chancery*): Whereupon, &c., [*as in Schedule (J.) (d) to the end*].

(a) The stamp-duty is 5s.

(b) That is to say, the word "by" is to be used when the deed is presented by the party himself; and the words "on behalf of" are to be used when it is presented by his agent.

(c) Printed *ante*, p. 250.

(d) Printed *ante*, p. 56.

131. *This Act not to affect liability of Debtors on their Lands (a).*—Nothing contained in this Act shall affect or interfere with the present law and practice in regard to the liability of the lands contained in any security (b), or of the debtor (c), or with the rights and remedies of the creditor (d), or of the creditors of the creditor.

(a) This section is a new enactment, thus taking effect from and after 31st December 1868.

Its object is to prevent the change effected by section 117 on the succession of creditors in heritable securities affecting the legal remedies competent to heritable creditors or the liabilities of their debtors.

Section 12 of the Conveyancing Act, however, renders the debtor's heir no longer liable beyond the value of the estate to which he succeeds; and section 47 of the Conveyancing Act contains provisions as to the transmission of the personal obligation contained in heritable securities against persons taking the lands by succession or bequest, or (in the case of its being so agreed) by conveyance.

(b) See interpretation clause (section 3, paragraph 10), *ante*, p. 7.

(c) Including the debtor's successors (see interpretation clause, section 3, paragraph 12, *ante*, p. 8), meaning the debtor's heir-at-law in the first instance. See note (a) *supra* as to the effect of the Conveyancing Act.

(d) Including the creditor's successors in right of the security (see interpretation clause, section 3, paragraph 11, *ante*, p. 8); including his representatives in heritage or his representatives in moveables, as the case may be, according as executors are or are not excluded in terms of section 117.

132. *How any Heritable Security may be renounced or discharged (a).*—Any heritable security (b), whether dated before or after the commencement of this Act, constituted by infeftment as aforesaid (c), may be effectually renounced and discharged, in whole or in part, and the lands therein contained effectually discharged of the same, by a discharge in the form or as nearly as may be (d) in the form of Schedule (NN.) hereto annexed, and by the registration of such discharge (e) in the appropriate register of sasines, as aforesaid (f).

(a) This section merely re-enacts, with slight alterations, the provisions of 8 and 9 Vict. c. 31, sec. 8, which took effect from and after 1st October 1845.

Its object is to substitute a short form of deed discharging a heritable security in place of the long deed of discharge formerly in use.

Section 30 of the Conveyancing Act renders this section now applicable to discharges of real burdens.

(b) See interpretation clause (section 3, paragraph 10), *ante*, p. 7; and section 30 of the Conveyancing Act as to the discharge of real burdens.

(c) *Viz.*, in section 120, *ante*, p. 238.

(d) There must be no real deviation from the form here provided.

(e) With warrant of registration thereon; see section 141.

(f) Where it is not desired to record the whole discharge, a notarial instrument may competently be used under section 17.

SCHEDULE (NN.)

Form of Discharge of Bond and Disposition in Security, &c.

I, *A.B.*, in consideration of the sum of [*specify sum*] now paid to me by *C.D.*, do hereby discharge a bond and disposition in security [*or other security (a)*], dated [*insert date*], and recorded [*insert date of recording if recorded, and register of sasines*], for the sum of [*insert sum*], granted by [*insert name and designa-*

tion of debtor], in favour of [*insert name and designation of grantee*], and all interest due thereon; and I declare to be redeemed and disburdened thereof, and of the infeftment following thereon, all and whole [*describe the lands (b)*], all as specified and described in the said bond and disposition in security, dated and recorded as aforesaid, [*and if the same has been followed by sasine, here omit the words "and recorded," and add*] and instrument of sasine thereon, as the same is recorded in the [*specify the register of sasines in which the sasine is recorded*], on the [*specify date of registration*].* In witness whereof, &c., [*here insert a testing clause in usual form (c)*]. (Signed) *A.B.*

E.F., witness.

G.H., witness.

* If the grantor of the discharge is not the original creditor, but one who has acquired right to the security, specify shortly here the title or series of titles by which the grantor acquired such right.

(a) See note (b) *ante*, p. 258.

(b) As discharges are included by the interpretation clause (section 3, paragraph 7), *ante*, p. 6, in the words "deed or conveyance," the lands therein contained may be described by reference merely. Section 61 of the Conveyancing Act now regulates the mode of reference.

(c) As to the requisites of the testing clause, see section 38 of the Conveyancing Act.

133. Heritable Security how restricted (a).—Any heritable security (b) constituted as aforesaid (c) may be restricted, as regards any portion of the lands therein contained, by a deed of restriction in the form or as nearly as may be (d) in the form of Schedule (OO.) hereto annexed, and on such deed of restriction being recorded (e) in the appropriate register of sasines the security shall be restricted accordingly to the lands therein contained, other than those discharged by such deed of restriction, which lands thereby discharged

shall be released from the security to the same effect as if the same had never been contained in such security.

(a) This section is a new enactment, thus taking effect from and after 31st December 1868.

Its object is to substitute a short form of a deed restricting an heritable security to part of the lands thereby conveyed, in place of the long deed of restriction previously in use.

Section 30 of the Conveyancing Act renders this section now applicable to deeds restricting real burdens to part of the lands thereby affected.

(b) See interpretation clause (section 3, paragraph 10), *ante*, p. 7; and section 30 of the Conveyancing Act as to the restriction of real burdens.

(c) *Viz.*, in section 120, *ante*, p. 238.

(d) There must be no real deviation from the form here provided.

(e) With warrant of registration thereon; see section 141.

SCHEDULE (OO.)

Form of Deed of Restriction of an Heritable Security.

I, *A.B.*, in consideration of the sum of [*or if no price is paid for the restriction, considering that C.D. (the debtor) has requested me to release the lands herein-after described (or referred to) from the security herein-after specified, but without any consideration having been paid to me therefor*], do hereby declare to be redeemed and disburdened of the security constituted by a bond and disposition in security [*or other security*], dated [*insert date*], and recorded [*insert date of recording if recorded, and register of sasines*], for the sum of [*insert sum*] granted by [*insert name and designation of debtor*], in favour of [*specify name and designation of grantee*], [*and if the bond has been followed by sasine add*] and instrument of sasine thereon, dated [*insert date, if any*] and recorded [*specify the register and date of registration*], all and whole [*here*

describe the lands to be disburdened (a)], and I restrict the security thereby constituted to the lands and others contained in the said bond and disposition in security other than those hereby disburdened. [*If the grantor of the deed is not the original creditor, but one who has acquired right to the security, here specify shortly the title or series of titles by which the grantor acquired such right*]. In witness whereof, &c. [*here insert a testing clause in usual form (b)*].

(Signed) A.B.

E.F., witness.

G.H., witness.

(a) The lands to be disburdened must be described at full length.

(b) As to the requisites of the testing clause, see section 38 of the Conveyancing Act.

134. *Act to apply to all Heritable Securities (a).*—The whole provisions, enactments, and forms of this Act relative to bonds and dispositions in security shall be taken to apply and shall apply as nearly as may be to all heritable securities (b), unless in so far as such provisions, enactments, or forms may be inapplicable to the form or objects of such securities (c).

(a) This section is in point of form a new enactment, thus taking effect from and after 31st December 1878; but it is in substance a re-enactment of 17 and 18 Vict. c. 62, sec. 1, which took effect from and after 31st July 1854, declaring that the provisions of the two prior Acts relating to bonds and dispositions in security (8 and 9 Vict. c. 31, and 10 and 11 Vict. c. 50) should be taken to apply to all heritable securities.

The object of the section is to render the preceding sections applicable to all forms of heritable securities, although the bond and disposition in security, as the most common form, has been throughout selected as the subject of special enactment.

Section 30 of the Conveyancing Act, *inter alia*, renders applicable to real burdens the whole provisions, enactments, and forms of the present Act relating to the assignation, conveyance, transference, extinction and restriction of heritable securities, and the completion of titles thereto.

(b) See interpretation clause (section 3, paragraph 10), *ante*, p. 7; and, as to real burdens, section 30 of the Conveyancing Act.

(c) In all cases registration will be equivalent to infeftment, and such of the clauses of a bond and disposition in security as are applicable to the particular heritable security may be in the short form provided in Schedule (FF.).

135. *Parties may use the present Forms if they see fit (a).—*Nothing in this Act contained shall prevent the constitution, transmission, or extinction of heritable securities (b) in the forms in use prior to the 1st day of October 1845 (c).

(a) This section merely re-enacts the similar provisions of all the repealed Acts relating to heritable securities, viz., 8 and 9 Vict. c. 31, sec. 9; 10 and 11 Vict. c. 50, sec. 13; and 17 and 18 Vict. c. 62, sec. 4.

The object of the section is to allow the old styles and forms (which will be found in the Juridical Styles, 3d ed., vol. i., p. 273 *et seq.*) to be still used, in case it should for any reason be thought desirable to have recourse to them. It is, however, difficult to imagine any case in which advantage should be taken of this section, and the provisions of the Conveyancing Act have rendered incompetent several of the clauses contained in the forms referred to.

(b) See interpretation clause (section 3, paragraph 10), *ante*, p. 7; and, as to real burdens, section 30 of the Conveyancing Act.

(c) That is to say, the date at which the first of the now repealed Acts relating to heritable securities (8 and 9 Vict. c. 31) came into operation.

136. *Fees to be taken by Town Clerks of Royal Burghs and Keepers of Registers in office at 1st October 1845, during their respective rights of office, &c. (a)*—Nothing herein contained shall be construed to prevent the town clerks of royal burghs in Scotland who were appointed to their respective offices prior to the 1st day of October 1845 (b), during the existence of their respective rights of office, from exacting and receiving the same fees in respect of the recording of assignations or conveyances of a bond and disposition in security, or of abbreviates of adjudication, writs of acknowledgment, or instruments for completing a title to such securities under this Act, as the same town clerks would before the said 1st day of October 1845 (b)

Page 262, section 136.

As to the fees payable to Town-Clerks appointed after 8th March 1860, see A. S. of 4th July 1882, printed in marginal note, *post*, p. 295.

have been legally entitled to exact or receive on their own account, in respect of passing the infestments within burgh, and preparing and recording the instruments of sasine and resignation rendered unnecessary by such assignations, conveyances, writs of acknowledgment, instruments or abbreviates of adjudication as aforesaid; and also nothing shall be construed to prevent the said town clerks who were appointed to their respective offices prior to the 30th day of *September* 1847 (*c*), during the existence of their respective rights of office, from exacting and receiving the same fees in respect of recording bonds and dispositions in security, or other deeds constituting heritable securities over lands held burgage, as the same town clerks would prior to that date have been legally entitled to exact or receive on their own account in respect of passing the infestment within burgh, and preparing and recording the instruments of sasine and resignation on such bonds and dispositions in security or other deeds: Provided always, that in computing the said fees such instruments of sasine and resignation shall not be computed as of greater length than the writings actually recorded whereby such instruments of sasine and resignation have been rendered unnecessary; and all other keepers of registers of sasines who were in office on the 1st day of *October* 1845 (*b*) and on the 30th day of *September* 1847 (*c*) respectively as aforesaid shall, during the existence of their respective rights of office, or until otherwise regulated by law, upon the registration by them of each assignation, conveyance, writ of acknowledgment, abbreviate of adjudication, or instrument aforesaid for transferring or completing the title to such securities, or of each bond and disposition in security or other deed registered under the provisions of this Act, be entitled to the same fees as such keeper would have been entitled to upon the registration of an instrument of sasine of the same length in favour of the same party in reference to the same right, and to no other or further fee whatever.

(a) The first part of this section, and the proviso so far as applicable thereto, merely re-enact the provisions of 8 and 9 Vict. c. 31, sec. 10, which took effect from and after 1st October 1845; and the second part of this section, and the proviso so far as applicable thereto, merely re-enact the provisions of 10 and 11 Vict. c. 50, sec. 11, which took effect from and after 30th September 1847.

The object of the section is to preserve vested interests in fees payable under the now obsolete system of expeding and recording instruments of sasine.

(b) Viz., the date from and after which 8 and 9 Vict. c. 31, took effect.

(c) Viz., the date from and after which 10 and 11 Vict. c. 50, took effect.

137. (a) *This Act to apply to Lands held by any description of Tenure* (b).—The whole of this Act shall apply to lands by whatever tenure (c) the same may be held, except in so far as any of the provisions of this Act shall be limited expressly or by necessary implication to lands held by one particular tenure.

(a) Here begins a series of general enactments, extending to the end of the Act.

(b) This section is in point of form a new enactment, thus taking effect from and after 31st December 1868. Some of the Acts now repealed were applicable exclusively to lands held by burgage tenure, while others were applicable exclusively to lands held feu.

The object of the section is to obviate, as far as possible, the repetitions necessitated by the plan adopted by these Acts.

Section 25 of the Conveyancing Act abolishes the distinction between estates in land held burgage and estates in land held feu, in so far as regards the conveyances relating thereto, or the completion of titles, or any of the matters or things to which the provisions of that Act relate.

(c) Feu, blench, burgage, or booking.

(d) For example, section 5 is expressly limited to lands not held by burgage tenure, and section 7 is expressly limited to lands held by burgage tenure; while section 6 is limited by necessary implication to lands not held by burgage tenure.

138. *Short clauses of consent to Registration may be used in any Deed* (a).—The short clauses of consent to registration for preservation, and for preservation and

execution, contained in forms No. 1. and 2. of Schedule (B.) hereto annexed (*b*), when occurring in any deed or conveyance under this Act, or in any deed or writing or document of whatsoever nature, and whether relating to lands or not, shall unless specially qualified import a consent to registration and a procuratory of registration in the books of Council and Session, or other judges' books competent, therein to remain for preservation; and also, if for execution, that letters of horning, and all necessary execution, shall pass thereon, upon six days' charge, on a decree to be interponed thereto in common form (*c*).

(*a*) This section re-enacts, with some additions, the provisions of 10 and 11 Vict. c. 48, sec. 1, which took effect from and after 30th September 1847, and 23 and 24 Vict. c. 143, sec. 30, which took effect from and after 1st October 1860. The former enactment applied only to deeds and instruments necessary for the transmission of lands not held burgage, but it was extended by the latter enactment to any deed or writing whatever. By the present section it is expressly declared applicable to any deeds, whether relating to land or not.

The object of the section is merely to explain the import of the short forms of the clauses here mentioned, the words here used to express the import being very much the words of the fuller clauses formerly in use.

The Land Registers Act of 1868 (31 and 32 Vict. c. 64, sec. 12), printed *post*, provides that a writ competently recorded in the general register of sasines shall be held to be registered also in the books of Council and Session for preservation, or for preservation and execution, as the case may be, provided that the warrant of registration specifies that the registration is to be for preservation, or for preservation and execution, as well as for publication; and under 40 and 41 Vict. c. 40, sec. 6, printed *post*, where writs containing a clause of registration for preservation and execution have been registered for preservation only, they may afterwards be registered for preservation and execution.

(*b*) Printed *ante*, p. 23 and 28.

(*c*) As to registration generally, see Bell's Lectures on Conveyancing, first edition, p. 209.

139. Females may act as Instrumentary Witnesses (*a*).—It shall be competent for any female person of the age of fourteen years or upwards (*b*), and

not subject to any legal incapacity (c), to act as an instrumentary witness in the same manner as any male person of that age, who is subject to no legal incapacity, can act according to the present law and practice, and it shall not be competent to challenge any deed or conveyance or writing or document of whatever nature (d) whether executed before or after the passing of this Act, on the ground that any instrumentary witness thereto was a female person.

(a) This section is a new enactment, but retrospective in its operation.

Its object is to remove doubts as to the competency of women to act as instrumentary witnesses.

(b) That is to say, of the same age as competent male witnesses, although pupillarity ceases in the case of females at the age of twelve.

(c) By legal incapacity is here meant whatever would render a male person an incompetent instrumentary witness, such as insanity, blindness, or interest in the deed witnessed. Marriage is obviously not a disqualification; and as near relationship or liability to undue influence is not a good ground of objection to an instrumentary witness, it is thought that a married woman may even act as a witness to her husband's signature. On various grounds, however, it is not desirable that wives should be witnesses to deeds granted by their husbands.

(d) It has been decided that although the title and preamble of the Act relate only to lands and heritable rights, females may act as witnesses to deeds dealing with moveables as well as to those dealing with heritage; *Hannay, &c.*, 1st Dec. 1873, 1 Rettie 246.

140. *Additional sheets may be added to writs (a).*
—In all cases where writs or deeds of any description are by this or any other Act permitted or directed to be engrossed on any conveyance or deed (b), it shall be competent, when necessary, to engross such deeds or writs on a sheet or sheets of paper, or of whatever other material the conveyance itself consists, added to such conveyance, provided that the engrossing of the deed or writ shall be commenced on some part of the conveyance or deed itself on which it is permitted or directed to be engrossed (c); and the first of such

additional sheets shall be chargeable with the stamp duty applicable to the writ or deed partly engrossed thereon, and subsequent sheets (if any) shall be chargeable with the appropriate progressive duty (*d*).

(*a*) This section is a new enactment, thus taking effect from and after 31st December 1868.

Its object is to remove doubts as to the competency of continuing on additional sheets the writs or deeds here mentioned, in cases where there is not sufficient space left on the deed on which they are directed to be engrossed to permit of the whole of such writ or deed being so engrossed. It is, however, thought that there was never any ground for these doubts.

(*b*) The writs here mentioned are chiefly writs of confirmation and writs of resignation, which are now incompetent under section 4 of the Conveyancing Act. As to the competency of writs of investiture, see note (*a*) to section 110, *ante*, p. 214. Assignations written on the deed assigned are still competent; see *ante*, p. 75.

(*c*) Of course the commencement will be signed in the same manner as the subsequent pages; and the testing clause will state the part of the deed on which the writ is commenced.

(*d*) Under the Stamp Act of 1870 (33 and 34 Vict. c. 97) no progressive duty is payable from and after 1st January 1871.

141. (*a*) *All Deeds, &c. recorded in Register of Sasines to have Warrants of Registration endorsed, except certain Burgage Deeds* (*b*). — All conveyances and deeds (*c*), and all writings whatsoever which may be recorded in any register of sasines, shall, previous to being presented for registration, have a warrant of registration (*d*) endorsed or written thereon in or as nearly as may be (*e*) in such one or other of the forms of warrants of registration contained in the following schedules hereto annexed, viz., Schedule (F.) No. 2. (*f*) and Schedule (H.) Nos. 1, 2, and 3 (*g*), as may be applicable to the particular conveyance, deed, or writing so to be presented, which warrant shall in every case specify the person or persons on whose behalf the conveyance, deed, or writing is presented for registration, and in the case of lands (*h*) not held

by burgage tenure the register or registers of the county or counties, and in the case of lands (*h*) held by burgage tenure the register or registers of the burgh or burghs in which the lands to which such conveyance or deed or writing has reference are situated, and shall be signed by such person or persons, or by his or their agent or agents (*i*), and in the latter case the warrant may be signed either by an individual agent or by the subscription of any firm of which such agent may be a partner (*k*) : Provided always, that nothing herein contained shall render it necessary to have a warrant of registration endorsed or written upon any conveyance, deed, or writing of or relating to lands held by burgage tenure which according to the existing law or practice may be recorded in any burgh register without such warrant (*l*) : Provided always, that where registration has been or shall be made in any particular register of sasines (*m*), it shall be sufficient that such register is specified in the warrant of registration, without any specification of a county or counties.

(*a*) This is one of the amended sections substituted by the Amendment Act of 1869, to be read and construed as if it had originally been the 141st section of the principal Act ; see note (*a*) *ante*, p. 1, and note (*a*) *ante*, p. 3.

The amendment consists in the addition of the last proviso, rendered necessary by the fact that, although the new forms of warrants were not adapted to registration in the particular registers, these registers were not abolished at once ; see note (*m*) *post*, p. 270.

(*b*) This section is a new enactment, thus taking effect from and after 31st December 1868. It, however, embodies the provisions of 21 and 22 Viet. c. 76, sec. 1, which took effect from and after 1st October 1858, first introducing warrants of registration on conveyances of lands not held burgage ; and 23 and 24 Viet. c. 143, sec. 3, which took effect from and after 1st October 1860, extending this provision to conveyances of lands held burgage.

The object of this section is to extend these enactments, and adapt them to the new system of registration introduced by the Land Registers Act of 1868. The present section is almost a repetition of section 4 of the Land Registers Act ; but the present Act applies to lands held by any description of tenure, while the latter Act does not apply to lands held burgage. “ Although both the Land Registers Act and the present Act received the Royal assent on 31st July 1868, it was at the time when the former left the House of Lords uncertain whether the latter could be carried through the two Houses of Parliament before the close of the session. The 4th section of the

former Act accordingly dealt with the Titles to Land Act of 1858 as a subsisting Act, and declared that the new form of warrant should supersede the form introduced by that Act."—*Marshall's Analysis*, p. 43. As the reference to the Titles to Land Act of 1858 is no longer applicable, the present section is the one by which matters are now regulated; and section 4 of the Land Registers Act has accordingly been repealed by the Statute Law Revision Act of 1875.

The first proviso at the end of the section, printed in small type, has been repealed, from and after 1st October 1874, by section 33 of the Conveyancing Act, which further directs that the remainder of the section shall apply to all conveyances and deeds, and all writings whatsoever, which may be recorded in any register of sasines.

The result is that every deed, writ, or instrument, including even the instrument of sasine, must have a warrant of registration endorsed or written thereon before it can be completely recorded in any register of sasines.

As to registration in the register of sasines for the purpose of preservation, or for preservation and execution, see note (a) to section 138, *ante*, p 265.

(c) The interpretation clause (section 3, paragraph 7), *ante*, p. 6, gives an extensive list of writings included under the terms deed or conveyance; but in the present instance this list is practically superseded by the expression here following, viz., "all writings whatsoever."

(d) As to the objects for which the warrant of registration has been introduced, see note (f) *ante*, p. 48.

(e) Great care should be taken not to deviate in any way from the forms here provided; see note (g) *ante*, p. 48.

(f) Printed *ante*, p 42.

(g) Printed *ante*, p. 49.

(h) The distinction between burgage and feu being now abolished, except as regards the registers of sasines, here read as inserted the words "which immediately prior to the commencement of the Conveyancing Act (1st October 1874) were;" see section 25 of the Conveyancing Act.

(i) In the case of writs recorded after 31st December 1868, the agent signing the warrant must add his professional designation as well as the word "agent;" see section 145, *post*, p. 273.

(k) The prior Acts did not expressly authorise the subscription of a firm; but section 145 of the present Act secures from challenge existing warrants so subscribed.

(*l*) The words here printed in small type have been repealed: see note (*b*) *supra*. The deeds referred to were instruments of sasine or resignation and sasine, notarial instruments, bonds and dispositions in security, assignations thereof, &c., applicable to burgage subjects.

Page 270, end of
note (*l*).

See Additional
Note, *post*, p.
72.

(*m*) The whole particular registers of sasines have been abolished under section 8 of the Land Registers Act of 1868, printed *post*, which provided that they should all be discontinued not later than 31st December 1871.

142. *Recording of Conveyances in the Register of Sasines authorized (a).*—All conveyances and deeds, and all instruments hereby authorized to be recorded in the register of sasines, may, with warrants of registration written thereon respectively, be recorded at any time in the life of the person on whose behalf the same shall be presented for registration, in the same manner as instruments of sasine, or of resignation and sasine, or of cognition and sasine (*b*), or notarial instruments, are at present recorded (*c*), and the same when presented for registration shall be forthwith shortly registered in the minute books of the said register in common form, and shall with all due despatch be fully registered in the register books, and thereafter re-delivered to the parties with certificates of due registration thereon, which shall specify the date of presentation, and the book and folios in which the engrossment has been made, and shall be subscribed by the keeper of the register, and shall be probative of such registration, and when so registered shall in competition be preferable according to the date of registration, and the date of entry in the minute-book shall be held to be the date of registration; provided, that where two or more deeds or conveyances transmitted by post in terms of “The Land Writs Registration (*Scotland*) Act, 1868” (*d*), shall be received by the keeper of the register of sasines at the same time, the entries thereof in the presentment book and minute book shall be of the same year, month, day, and hour, and such deeds and conveyances shall be deemed and taken to be presented and registered contemporaneously (*e*); and extracts

of all such conveyances or deeds, warrants of registration, and instruments so recorded shall make faith in all cases as the recorded conveyances or deeds, warrants, and instruments themselves would have done, except where any such conveyance or deed, warrant, or instrument so recorded shall be offered to be improved (*f*).

(*a*) This section consolidates the provisions of 21 and 22 Vict. c. 76, sec. 19, which took effect from and after 1st October 1858, as regards conveyances of land not held burgage, and 23 and 24 Vict. c. 143, sec. 13, which took effect from and after 1st October 1860, as regards conveyances of lands held burgage. The present section extends these provisions to all writings recorded in any register of sasines, and adds a proviso to meet the case of deeds transmitted by post in terms of the Land Registers Act of 1868.

The object of the section is to extend to every mode of obtaining infestment the rule of law introduced by the Infestment Act of 1845, that an instrument of sasine might be recorded at any time in the lifetime of the person in whose favour it was expedite, in place of within sixty days of its date. Where a party who is in a position to take infestment dies without doing so, recourse must be had by his successors to one or other of the various competent modes of completing a title in their own persons.

(*b*) Instruments of resignation and sasine appear to be now incompetent; see note (*a*) *ante*, p. 52. Instruments of cognition and sasine are perhaps still competent under section 26 of the Conveyancing Act; but they are quite superseded by services and writs of *clare constat*.

(*c*) As to the mode of recording, see Bell's Lectures on Conveyancing, 1st ed., p. 618.

(*d*) The title of the Act is here incorrectly stated; it ought to be "The Land Registers (*Scotland*) Act, 1868." The mistake, however, is of no consequence, as section 6 of that Act contains the same enactment.

(*e*) The Land Registers Act (31 and 32 Vict. c. 64, sec. 6), first permitted writs to be transmitted by post for registration in the general register of sasines.

(*f*) That is to say, the extracts shall be equally probative with the principals, except where the principals are challenged as false and forged.

143. *Conveyances and Instruments may be recorded of new (a).*—In case of any error or defect in any instru-

ment (b) or in the recording of any deed or conveyance (c), or of any warrant of registration, recorded or to be recorded in any register of sasines, or in any warrant of registration thereon, or in the recording of such warrant, it shall be competent of new to make and record such instrument, or of new to record the deed or conveyance with the original or a new warrant of registration, as the case may require (d).

(a) This section consolidates the provisions of 23 and 24 Vict. c. 143, secs. 18 and 35, which took effect from and after 1st October 1860. A similar enactment was contained in 21 and 22 Vict. c. 76, sec. 31, which took effect from and after 1st October 1858, applicable to lands not held burgage; but as it erroneously referred to notarial instruments expedite under 8 and 9 Vict. c. 35, instead of under 8 and 9 Vict. c. 31, it was repealed by 23 and 24 Vict. c. 143, sec. 35.

The object of the section is to afford a simple mode of correcting errors in the procedure adopted for the purpose of obtaining infestment.

(b) Including instruments of sasine and notarial instruments; see interpretation clause (section 3, paragraph 9), *ante*, p. 7.

(c) See interpretation clause (section 3, paragraph 7), *ante*, p. 6.

(d) If the error or defect is of so serious a character as to render the first registration ineffectual as an infestment, the date of the second registration will of course determine any question of preference.

144. *Recorded Instruments not to be challenged on the ground of erasures (a).*—The Act of the sixth and seventh of His late Majesty King William the Fourth, chapter 33, intituled “*An Act to Amend and Regulate the Law of Scotland as to Erasures in Instruments of Sasine and of Resignation ad remanentiam*” (b), shall extend and be applicable to all instruments (c).

(a) This section consolidates the provisions of 21 and 22 Vict. c. 76, sec. 33, which took effect from and after 1st October 1858, as regards lands not held burgage, and 23 and 24 Vict. c. 143, sec. 19, which took effect from and after 1st October 1860, as regards lands held burgage. The present section extends the enactments it consolidates, as several new forms of instruments are introduced by other sections of the Act.

The object of the section is to prevent any instrument being challenged solely on the technical ground that part of it is written

on an erasure. The enactment appears to be retrospective. Section 54 of the Conveyancing Act contains a similar enactment in regard to erasures in the record.

(b) The enactment here referred to (in so far as not repealed by the Statute Law Revision Act of 1874, 37 and 38 Vict. c. 35) is the following:—"No challenge of any instrument of sasine or resignation "ad remanentiam shall hereafter receive effect, either by reduction or "exception, on the ground that any part of the said instrument is "written on an erasure, unless it shall be averred and proved that such "erasure had been made for the purpose of fraud, or the record thereof "is not conformable to the instrument as presented for registration. ". . . Provided also, that nothing herein contained shall extend or "be construed to extend to instruments of sasine or resignation and "sasine propriis manibus: Provided also, that where any feudal title "of property or title in security has been completed in order to "remedy or supply defects arising from erasures in instruments of "sasine, the validity of the said titles shall not be affected by any- "thing herein contained."

As this enactment applies only to erasures, other vitiations, such as deletions, interlineations, and marginal additions occurring in instruments, still require to be authenticated in the same manner as such vitiations occurring in other deeds.

(c) Including by the interpretation clause (section 3, paragraph 9), *ante*, p. 7, instruments of sasine, &c., and all notarial instruments expedite under the present Act or any of the repealed Acts.

145. *Not competent to challenge existing Warrants of Registration on certain grounds (a).*—It shall not be competent to challenge the validity of any existing (b) warrants of registration upon conveyances under the Titles to Lands (*Scotland*) Acts of the twenty-first and twenty-second years of the reign of Her present Majesty, chapter 76, and the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter 143, hereby repealed (c), or the real rights completed in the persons of those in whose favour the said conveyances are recorded by the registration thereof in the appropriate register of sasines, on the ground that the said warrants of registration are disconform to the terms of the schedules annexed to the said Acts (d), provided that the said warrants contain the name of the party or parties on whose behalf the warrant is

written, and contain the designation of such party or parties, or refer to the same as given in the conveyance on which such warrants are engrossed, and are signed by the party or parties themselves, or by his or their agent or agents, either individually or as a partnership; and the designation "agent" or "agents," without any further designation, shall be valid and sufficient in the case of all warrants expedite in virtue of the said repealed Acts.

(a) This section is a new enactment, but retrospective in its operation.

Its object is to prevent any warrant of registration on a deed recorded prior to 31st December 1868 being challenged on the ground that the agent signing it has not complied with the requirements of the Acts now repealed, in respect he has signed it by the social name of his firm, or has not appended to his signature his professional designation and the name of his client.

(b) This enactment does not in any way apply to warrants of registration on deeds, writs, or instruments recorded since 31st December 1868. Such warrants must be strictly in accordance with the forms provided by section 141 of the present Act; so that the agent's professional designation, as well as the word "agent," must be appended to his signature.

(c) The repeal is effected by section 4, *ante*, p. 9.

(d) See the case of *Johnston v. Pettigrew*, 16th June 1865, 3 Macph. 954, referred to in note (g), *ante*, p. 48.

146. *Obligations appointed to be inserted in Instruments of Sasine shall be inserted in Notarial Instruments (a).*—Where any real burden, condition, provision, or limitation, or other matter (b) has been or shall be appointed to be inserted or referred to in the instruments of sasine or of resignation *ad remanentiam*, or other instruments applicable to any lands, such real burden, condition, provision, or limitation, or other matter, shall be inserted or referred to in manner provided by this Act (c) in every instrument (d) applicable to such lands to be expedite in virtue of this Act, and in every conveyance or deed of or relating to such lands the registration of which in the register of sasines is by this Act equivalent to infeftment (e) or resignation

ad remanentiam (*f*): Provided always, that where such real burdens, conditions, provisions, limitations, or other matters have been already inserted in any conveyance or deed (*g*) or instrument (*d*) recorded in the appropriate register of sasines, it shall not be necessary to insert the same at length in any subsequent conveyance or deed or instrument, provided the same be therein referred to in manner provided in the 9th (*h*) or 10th sections (*i*) of this Act, as the circumstances of the case may require.

(*a*) This section re-enacts the provisions of 21 and 22 Vict. c. 76, sec. 29, which took effect from and after 1st October 1858, as regards notarial instruments applicable to lands not held burgage; 23 and 24 Vict. c. 143, sec. 17, which took effect from and after 1st October 1860, as regards notarial instruments applicable to lands held burgage; and 23 and 24 Vict. c. 143, sec. 31, which took effect from and after 1st October 1860, as regards the proviso that real burdens, &c., may be referred to as already inserted in a recorded deed or instrument.

The object of the section is to adapt to the modern mode of obtaining infestment appointments contained in prior deeds or statutes that real burdens, &c., shall be inserted or referred to in all instruments of sasine, &c., thereafter expedite.

(*b*) Such is the conditions of an entail.

(*c*) Viz., in sections 9 and 10, *ante*, pp. 33 and 36.

(*d*) Including by the interpretation clause (section 3, paragraph 9) *ante*, p. 7) all notarial instruments as well as instruments of sasine, &c.

(*e*) See section 15, *ante*, p. 46.

(*f*) Resignation *ad remanentiam* appears to be now incompetent; see note (*p*) *ante*, p. 20.

(*g*) See interpretation clause (section 3, paragraph 7), *ante*, p. 6.

(*h*) *Ante*, p. 33.

(*i*) *Ante*, p. 36.

Page 275, note

(*b*).

For "is" read
"as."

147. *Prohibition against Sub-infeudation not to be affected* (*a*).—Where the investiture (*b*) of any lands

(c) has imposed or shall impose (d) a prohibition against sub-infeudation or against alternative holding (e) nothing contained in this Act shall operate to authorize sub-infeudation or an alternative holding (e) in respect to such lands; and nothing in this Act contained shall be construed to take away or impair any of the rights or remedies competent to a superior against his vassal lying out unentered (f).

(a) This section re-enacts the words of 21 and 22 Vict. c. 76, sec. 28, which took effect from and after 1st October 1858; though the words "this Act" have, of course, different meanings in the two enactments.

The object of the section is to prevent superiors being deprived of the rights here mentioned through the operation of sections 6, 19, 24, 25, 46, and 62.

As noted below, the provisions of the Conveyancing Act effect a partial repeal of this section.

(b) That is to say, the feudal title or completed real right.

(c) Including all heritable subjects, securities, and rights; see interpretation clause (section 3, paragraph 13), *ante*, p. 8.

(d) Section 22 of the Conveyancing Act renders null and void all conditions made after 1st October 1874 to the effect that it shall not be lawful to the proprietor of lands to sub-feu the same, or to grant conveyances with an alternative holding.

(e) An alternative holding has been rendered useless by the provisions of the Conveyancing Act; see note (c) *ante*, p. 26. An alternative holding was held not to be a contravention of a prohibition against sub-infeudation; see note (d) *ante*, p. 26.

(f) Section 4 of the Conveyancing Act abolishes non-entry, and provides a new form of process for recovering payment of casualties.

148. *In all questions under the Bankrupt Acts in Scotland, the Dates of Registration of Assignations, &c. to be held to be the Dates of the Instruments* (a).—In all questions under an Act passed by the Parliament of Scotland in the year 1696, intituled "*Act for declaring nottour Bankrupts*" (b), and under an Act passed in the fifty-fourth year of the reign of His Majesty King George the Third, intituled "*An Act for rendering the Payment of Creditors more equal and expeditious in Scotland*" (c), and under an Act passed

in the Session of Parliament held in the nineteenth and twentieth years of the reign of Her present Majesty, intituled "*An Act for regulating the Sequestration of the Estates of Bankrupts in Scotland*" (*d*), the date of the registration (*e*) of all conveyances or deeds (*f*) and discharges granted or taken in pursuance of this Act shall be held to be the date of such conveyances or deeds and discharges respectively, without prejudice to their validity or invalidity in other respects.

(*a*) This section re-enacts the provisions of 8 and 9 Vict. c. 31, sec. 7, which took effect from and after 1st October 1845, as regards deeds and instruments used in the transmission and extinction of heritable securities; and extends these provisions to all recorded deeds and instruments.

Sasine being required to render a deed completely effectual in competitions and questions in bankruptcy, and registration of a conveyance or instrument being now equivalent to a duly recorded instrument of sasine, the object of the present section is to declare the date of registration to be equivalent to the date of recording an instrument of sasine.

(*b*) Viz., 1696, c. 5, under which voluntary deeds on which sasine has been taken within sixty days of bankruptcy are reducible.

(*c*) Viz., 54 Geo. III. c. 137 (the old Bankruptcy Act).

(*d*) Viz., 19 and 20 Vict. c. 79 (the Bankruptcy Act of 1856).

(*e*) In the appropriate register of sasines.

(*f*) As to the variety of writs included in the terms "conveyance" and "deed," see interpretation clause (section 3, paragraph 7), *ante*, p. 6.

149. *Deeds and Instruments may be partly written and partly printed or engraved (a).*—All deeds and conveyances, and all documents whatever mentioned or not mentioned in this Act, and whether relating or not relating to land having a testing clause may be partly written and partly printed or engraved or lithographed: Provided always, that in the testing clause the date, if any, and the names and designations of the witnesses, and the number of the pages of the

deed or conveyance or document, if the number be specified (*b*), and the name and designation of the writer of the written portions of the body of the deed or conveyance or document shall be expressed at length (*c*), and all such deeds, conveyances, and documents shall be as valid and effectual as if they had been wholly in writing: Declaring that no such deeds, conveyances, and documents executed prior to the commencement of this Act (*d*) shall be challengeable on the ground that the name of the writer of the written portions of the testing clause is not mentioned (*e*).

(*a*) This section re-enacts, with some additions and one omission, the provisions of 21 and 22 Vict. c. 76, sec. 34, which took effect from and after 1st October 1858, as extended to writs relating to lands held burgage by 23 and 24 Vict. c. 143, sec. 20, which took effect from and after 1st October 1860. The additions consist in (1) the insertion of the words "whether relating or not relating to land," (2) the insertion of the words "or lithographed," and (3) the declaration at the end of the section. The prior enactments required that the name and designation of the writer of the written portions of the testing clause should be stated, but this requirement has been purposely omitted in the present section.

The object of this section is to authorize the use of printed, engraved, or lithographed forms, the blanks in which may be filled up in writing.

(*b*) The number does not require to be specified where the deed consists of only one sheet; see Bell's Lectures, 1st ed., p. 58.

(*c*) Section 38 of the Conveyancing Act relaxes the strict rules of the law of Scotland as to the execution and authentication of probative deeds; but it would not be prudent to regard that section as repealing this proviso. The probative character of deeds partly written, engraved, or lithographed rests upon the present section, which applies only to documents with a testing clause, and which requires the particulars here specified to be mentioned in the testing clause. Under section 39 of the Conveyancing Act, however, such deeds, if bearing to be attested by two witnesses subscribing, may, it is thought, be set up, notwithstanding the omission of these particulars, on proof that they were subscribed by the grantor and witnesses.

The Companies Act of 1862 and section 56 of the Conveyancing Act contain exceptional provisions as to company deeds.

(*d*) Viz., 31st December 1868.

(*e*) This declaration, retrospective in its operation, was added in

case the requirements of the former statutes on this subject should have been accidentally overlooked, seeing that in ordinary deeds it was sufficient to name and design the writer of the body of the deed.

150. *Debts affecting Lands exchanged for other Lands to affect such other Lands in lieu thereof (a).—* When any lands disposed before or after the commencement of this Act, under the authority of an Act of Parliament (*b*), in excambion for other lands, are burdened with debts, the lands so disposed shall, from and after the date of registration, whether before or after the commencement of this Act, in the appropriate register of sasines of the contract or deed of excambion of such lands, be freed and disburdened of such debts so far as previously affecting the same, and shall be burdened with the debts, if any, which previously affected the lands acquired in exchange for the same, in the order of preference in which such debts were a burden upon such last-mentioned lands: Provided always, in the case of excambions after the 31st day of *December* 1868 (*c*), and before any such excambion is authorized (in addition to such procedure as may be prescribed by such Act) such intimation as the Court of Session may consider necessary shall be made to all creditors having interest (*d*), and such creditors shall be entitled to state any objections thereto, of which the Court shall judge: Provided also, that in such contract or deed of excambion, whether executed before or after the commencement of this Act, or in a schedule subscribed as relative thereto, and declared to be part thereof, and recorded (*e*) therewith, there have been or shall be (*f*) set forth as to each of the said debts the following particulars; namely, the amount of the debt, the date of recording (*e*) the writ by which its constitution was originally published, the register in which the same was so published, the name and designation of the original creditor, and, if the debt has been transferred, the name and designation of the creditor understood to be in right thereof for the time, and the date of recording (*e*)

the writ whereby his right was published, and the register in which the same was so published: Provided further, that in such contract or deed of excambion such debts have been or shall be (*f*) expressly declared to burden the lands to which the same are transferred as aforesaid.

(*a*) This section re-enacts, with verbal alterations, 23 and 24 Vict. c. 143, sec. 28, which took effect from and after 1st October 1860.

Its object is to facilitate excambions where one or both of the estates are entailed and burdened with debts.

(*b*) Either a private estate Act or any of the entail statutes, viz., 10 Geo. III. c. 51; 6 and 7 Will. IV. c. 42; 4 and 5 Vict. c. 24; 11 and 12 Vict. c. 36; 16 and 17 Vict. c. 94; and 38 and 39 Vict. c. 61.

Page 280, end of
note (*b*).

And 45 and 46
Vict c. 53.

(*c*) That is to say, after the commencement of this Act.

(*d*) The petition should contain a prayer for service on any creditors.

(*e*) In the appropriate register of sasines.

(*f*) According as the excambion has taken place before or after the commencement of the present Act.

151. *Provisions for Lands held Burghage where no Burgh Register of Sasines is kept* (*a*).—From and after the commencement of this Act, and during the period to which the rights of any town clerk appointed prior to the 8th day of *March* 1860 (*b*), in any burgh in which lands are held burghage, and no register of sasines is kept, extend under legal appointment, and no longer, no conveyance or deed of or relating to lands in such burgh held burghage, and which under the provisions of this Act shall come in place of any conveyance or deed which such town clerk would by law have been exclusively entitled to prepare (*c*) had the Act 23d and 24th *Victoria*, chapter 143 (*d*), or this Act, not been passed, shall, as regards such lands, be validly recorded in any register of sasines, unless the warrant of registration of such conveyance or deed shall be subscribed or endorsed with the signa-

ture of such town clerk, which signature he shall be bound to attach or endorse on receipt in respect thereof of one-half of the fees which would have been chargeable by him for the preparation of the conveyance or deed which he would have been entitled to prepare as aforesaid, and of no other fees; but if the said conveyance or deed be prepared by him, he shall not be entitled, in respect of his signature as aforesaid, to any other beyond the ordinary fees for preparing such conveyance or deed: Provided always, that in estimating the said fees the said conveyance or deed which he would have been entitled to prepare as aforesaid, shall not be computed as of any greater length than the conveyance or deed signed by such town clerk.

(a) This section re-enacts, with verbal alterations, 23 and 24 Vict. c. 143, sec. 22, which took effect from and after 28th August 1860.

Its object is to provide for vested interests in fees payable under the old system to the town clerks of a few royal burghs in which, though the lands are held burgage, no burgh register of sasines is kept. The burghs referred to are, it is believed, Dornoch, Musselburgh, Anstruther Easter, Kilrenny, and Inverary.

Section 25 of the Conveyancing Act abolishes the distinction between estates in land held feu and estates in land held burgage.

(b) Viz., the date fixed by 23 and 24 Vict. c. 143, sec. 21, and section 153 of the present Act, in the case of burghs in which a register of sasines is kept.

(c) Such as instruments of resignation and sasine, or of cognition and sasine.

(d) Viz., "The Titles to Land (*Scotland*) Act, 1860."

152. Provisions for Lands in the Burgh of Paisley held by Booking Tenure (a).—All the provisions of this Act applicable to lands held by the ordinary burgage tenure shall be applicable also to lands in the burgh of *Paisley* (b) held by the peculiar tenure of booking; and all the provisions of this Act applicable to resignation, and to instruments of sasine, and of resignation and sasine, and of cognition and sasine (c), and registers of sasines, respectively, of lands (b) held burgage, shall be

applicable also to booking, and to instruments of resignation and booking (c), and to extract bookings, and to the register of booking, respectively, of lands in the said burgh of *Paisley* held by said tenure of booking: Provided always, that nothing in this Act contained shall prevent the constitution, transmission, or completion of rights to lands held by the said tenure of booking by the forms competent prior to the passing of this Act (d).

(a) This section re-enacts 23 and 24 Vict. c. 143, sec. 23, which took effect from and after 1st October 1860.

Its object is to make the provisions of the Act as to lands held burgage equally applicable to lands held by the peculiar tenure of booking, as to which see Bell's *Lectures on Conveyancing*, 1st ed., p. 743, 2d ed., p. 794.

Section 25 of the Conveyancing Act abolishes the distinction between estates in land held feu and estates in land held burgage or by booking; but the registers of sasines are still kept separate.

(b) Here read as inserted the words "which immediately prior to 1st October 1874 were;" see section 25 of the Conveyancing Act.

(c) As to these now obsolete forms, see note (p) *ante*, p. 20, note (a) *ante*, p. 52, and note (b) *ante*, p. 271.

(d) Under section 26 of the Conveyancing Act, conveyances of land previously held by booking tenure may be either in the forms allowed by the present Act or in those applicable to lands held by feudal tenure; but it is not necessary to insert in any such conveyances a procuratory or clause of resignation, and such procuratory or clause, if inserted, is to be held *pro non scripto*.

153. *Fees of Town Clerks appointed prior to 8th March 1860 reserved, but no Town Clerks appointed after that date to have claims for Compensation for loss of Fees, &c. (a).*—No town clerk of any royal or other burgh in *Scotland* who has been appointed subsequent to the 8th day of *March* 1860 shall have any exclusive right or privilege of preparing or expediting any conveyance or deed of or relating to land, or shall have any right to compensation in respect of any alterations affecting the rights, duties, or emoluments of town clerks which may be made by this Act, or any Act which may hereafter be passed: Provided always, that town clerks, whether sole or joint, who, according to

Page 282, section 153.

As to the fees payable to Town-Clerks appointed after 8th March 1860, see A. S. of 4th July 1882, printed in marginal note, *post*, p. 295.

the law and practice prior to the 8th day of *March* 1860, were exclusively entitled to prepare instruments of sasine or of resignation and sasine in burgage subjects, shall, each during the period to which his rights shall extend under any legal appointment or agreement existing at the foresaid date, but no longer, be entitled to claim and receive from the person presenting for registration in the burgh register of sasines kept by such town clerk any conveyance or deed which, when recorded, will operate the effect of a recorded instrument of sasine or of resignation and sasine, such fees as, but no other fees than, he would have had right to draw and to appropriate to his own use and benefit in respect of the preparation and recording of the instrument of sasine or of resignation and sasine which, if this Act had not been passed, must have been recorded in the burgh register of sasines, in order to operate the like effect as the recording therein of such conveyance or deed; and the person recording such conveyance or deed in the said register of sasines shall be bound to pay such but no other fees to such town clerk in respect thereof: Provided always, that in estimating the said fees such instruments of sasine or of resignation and sasine shall not be computed as of greater length than the writings actually recorded whereby such instruments of sasine or of resignation and sasine have been rendered unnecessary.

(a) This section re-enacts, with slight verbal alterations, 23 and 24 Vict. c. 143, sec. 21, which took effect from and after 1st October 1860.

Its object is to abolish the monopolies of town clerks in expediting instruments of sasine on lands held burgage, and to provide for vested interests in the fees payable therefor.

Section 136 contains a similar enactment in regard to the fees payable to town clerks for heritable securities.

154. *Official Acts of Town Clerks and Keepers of Registers of Sasines not to be affected by their personal interests in recorded Writs (a).*—It shall be competent for the town clerk of any burgh to expedite and record, and

for the keeper of any burgh or other register of sasines, reversions, &c., to record any conveyance or deed (b) in which such town clerk or keeper may be personally interested, either individually or as trustee for another or otherwise; and no conveyance or deed (b) expedite or recorded prior to the date of the passing of this Act, or which may hereafter be expedite or recorded, shall be challengeable or in any way affected by reason of personal interest in the town clerk or keeper of the register by whom the same has been expedite or recorded as aforesaid: Provided that this enactment shall not prejudice or affect any action or proceeding which may have been instituted prior to the passing of this Act.

(a) This section re-enacts, with verbal alterations, 23 and 24 Vict. c. 143, sec. 26, which took effect from and after 1st October 1860.

Its object is to permit town clerks and keepers of registers of sasines to perform their official duties with reference to deeds and instruments in which they are personally interested. Formerly, when a town clerk required to obtain himself infeft, it was necessary for him to present a petition to the Court of Session for a warrant to some other person to act as town clerk *pro hac vice* in expediting infeftment—*Duff v. Mags. of Elgin*, 16th Jan. 1823, 2 S. 117 (N.E. 109).

(b) See interpretation clause (section 3, paragraph 7), *ante*, p. 6.

155. (a) *Inhibitions to take effect from date of Registration of Notice, &c.* (b).—It shall be competent, before or after execution of any inhibition, whether by separate letters or contained in a summons before the Court of Session, to register in the general register of inhibitions a notice thereof, setting forth the names and designations of the persons by and against whom the same is raised, and the date of signeting the same, in the form or as nearly as may be (c) in the form of Schedule (PP.) hereto annexed; and where any such inhibition and the execution thereof shall be duly registered in the general register of inhibitions not later than twenty-one days from the date of the regis-

tration therein of such notice thereof, such inhibition shall take effect from the date when such notice was registered as aforesaid, but otherwise only from the date of the registration of such inhibition and the execution thereof; and no inhibition shall have any effect against any act or deed done, committed, or executed prior to the registration of such notice thereof, or of such inhibition and the execution thereof, as the case may be.

(a) This and the three following sections deal with inhibitions, and effect important improvements in the law and practice relating thereto. The Land Registers Act of 1868 deals with the registers of inhibitions and the officials connected therewith. Under section 42 of the Conveyancing Act inhibitions prescribe in five years unless renewed.

(b) This section is a new enactment, thus taking effect from and after 31st December 1868.

Its object is to regulate the date from which inhibitions shall take effect. Formerly, provided inhibitions were registered in the register of inhibitions within forty days from the date of their publication at the market cross, &c., they took effect from that date, thus rendering a search in the register of inhibitions insufficient for the purpose of ascertaining whether a proprietor had been inhibited. By the Land Registers Act (31 and 32 Vict. c. 64, sec. 16) and the Court of Session Act (31 and 32 Vict. c. 100, sec. 18) the old form of publication is dispensed with, registration in the general register of inhibitions being made equivalent to publication. The provisions of the former Act (sec. 16) are that "The particular registers of inhibitions and interdictions throughout Scotland shall be discontinued, and all diligences, executions, and other writings at present appropriate to those registers, or any of them, shall be registrable only in the general register of inhibitions, which shall be the only competent register for the registration of inhibitions and interdictions; and no publication whatever of such diligences, executions, and other writings, other than registration in said general register of inhibitions, shall in future be necessary, but such registration shall for all purposes whatsoever have all the legal effect of the publication at present in use." And the latter Act (sec. 18) provides that "It shall be competent to insert in the will of a summons passing the signet a warrant of inhibition, which shall have all the like force and effect as letters of inhibition in the form in use at the passing of this Act; and such warrant shall be as nearly as may be in the following form:—

" ' And also that ye lawfully inhibit the said
 " ' personally or at his dwelling-place, if within Scotland, and if
 " ' furth thereof, at the office of the keeper of the record of edictal
 " ' citations at Edinburgh, from selling, burdening, disponsing, alien-

“ ‘ating, or otherwise affecting his lands or heritages, to the pre-
 “ ‘judice of the pursuer ; and that ye cause register this summons
 “ ‘and execution hereof in the general register of inhibitions at
 “ ‘Edinburgh for publication to our lieges.’

“ When warrant of inhibition is contained in the will of a sum-
 “ mons passing the signet, such warrant may be executed either at
 “ the same time as the summons is served or at any time thereafter,
 “ and it shall not be necessary to publish such warrants, or to
 “ intimate letters of inhibition passing the signet, to the lieges
 “ in any other way than by registration in the general register of
 “ inhibitions ; and in registering, it shall be sufficient to register
 “ the summons, including the warrant of inhibition, and the execu-
 “ tion of such warrant, without registering any condescendence or
 “ note of pleas in law which may follow the summons, or where letters
 “ of inhibition are used, then such letters, with the execution thereof,
 “ shall be registered ; and from and after registration as aforesaid, the
 “ inhibition, whether contained in a summons or by separate letters
 “ of inhibition, shall be held to be duly intimated and published to
 “ all concerned.”

The present section introduces a short notice of inhibition, the registration of which is to be equivalent to the registration of the inhibition itself, provided the notice is duly followed up in the manner here prescribed. The object of this enactment is to enable an inhibitor to gain the time which would otherwise be lost between the execution and the registration of an inhibition.

(c) There must be no actual deviation from the form here provided.

SCHEDULE (PP.)

Notice of Inhibition.

Notice of letters of inhibition [*or of summons containing inhibition, as the case may be*].—*A.B.* [*insert designation of the inhibitor*] against *C.D.* [*insert designation of the inhibited*].—Signed [*insert date of signing*].

E.F., W.S. [*or S.S.C.*] Agent.

156. *Short Form of Letters of Inhibition (a).*—Letters of inhibition may be in the form as nearly as may be (*b*) of the Schedule (QQ.) to this Act annexed ; and letters of inhibition in such form shall have all the

like force and effect as letters of inhibition in the form in use at the passing of this Act (c).

(a) This section is a new enactment, thus taking effect from and after 31st December 1868.

Its object is to provide a short form of letters of inhibition, while leaving the old form still competent.

(b) There must be no actual deviation from the form here provided.

(c) The following Act of Sederunt was passed on 18th November 1871 :—

ACT OF SEDERUNT

IN PURSUANCE OF

The " Court of Session Act, 1868," and " The Titles to Land Consolidation (Scotland) Act, 1868," anent Inhibitions.—[18th November 1871.]

The Lords of Council and Session, in pursuance of the powers vested in them by the Act of Parliament 31 and 32 Vict. cap. 100, entitled "An Act to amend the Procedure in the Court of Session and the Judicial Arrangements in the Superior Courts of Scotland, and to make certain changes in the other Courts thereof;" and in pursuance of the powers vested in them by the Act of Parliament 31 and 32 Vict. cap. 101, entitled "An Act to consolidate the Statutes relating to the Constitution and Completion of Titles to Heritable Property in Scotland, and to make certain changes in the Law of Scotland relating to Heritable Rights," do hereby enact and declare as follows :—

I. That the mode of obtaining warrants for signeting letters of inhibition in the form mentioned in section 156 and Schedule QQ. of the said last recited Act, shall be by production of a *Fiat ut Petatur* duly obtained in the Bill Chamber, on a bill presented along with a proper ground of debt, or along with a depending summons upon which the inhibition is to be raised.

II. That nothing herein contained shall apply to inhibition, on a warrant to inhibit contained in the will of a summons, in virtue of the powers conferred by section 18 of the "Court of Session Act 1868."

And the Lords appoint this Act to be inserted in the books of sederunt, and to be published in the usual manner.

JOHN INGLIS, *I.P.D.*

The reason why a warrant to inhibit contained in the will of a summons does not require a bill, is because the inhibition is in that

case sufficiently warranted by the summons passing the signet. Where, however, the inhibition proceeds, not upon a warrant in a signetted summons, but upon a document of debt, a bill must still be presented in the Bill Chamber setting forth fully and explicitly all the grounds that justify the application for inhibition. Thus, in the case of *Stevens v. Campbell*, 28th June 1873, 11 Macph. 772, an inhibition was recalled in respect that the bill on which it proceeded did not sufficiently set forth the circumstances, which were the following :—The creditor in a bill of exchange which was dishonoured at maturity received from his debtor two renewal bills, on the understanding that he was to be entitled to do such diligence on the original bill as might be necessary for his security. During the currency of the renewal bills, the creditor presented a bill in the Bill Chamber setting forth merely that he was the holder of the original bill, and that it had been dishonoured at maturity, and craving letters of inhibition, which were accordingly granted. A petition for recall having been presented by the debtor, the Court held that the creditor ought to have set forth not only the original bill but also the renewal bills, and to have averred that the debtor was *vergens ad inopiam*. The Lord President observed—"While a bill is said" (in the Act of Sederunt above quoted) "not to be necessary where the inhibition is to follow on a summons containing warrant to inhibit, it seems clear that it is essential where the diligence proceeds on a document of debt. That being so, if the ground of debt be not simply a mere document of debt which is past due, then it is evident that the bill must bear some additional statement. If a bill accordingly be due at some future date, the statement that the debtor is *vergens ad inopiam* must be inserted before the creditor can obtain his diligence. In this case the bill for the letters of inhibition should have contained a full and explicit statement of the facts as they stood, especially seeing that they are by no means simple." Diligence in security of a future debt is competent only where the debtor is, and is averred to be, *vergens ad inopiam*, or in similar circumstances, such as *in meditatione fuge*; and in such cases the creditor should proceed by a bill, so as to give the debtor an opportunity of answering the allegation that he is *vergens ad inopiam*, &c.—*Dove v. Henderson*, 11th Jan. 1865, 3 Macph. 339; *Symington v. Symington*, 3d Dec. 1875, 3 Rettie 205.

SCHEDULE (QQ.)

Form of Letters of Inhibition (a).

Victoria, &c. (b). — To messengers-at-arms and others, our Sheriffs, greeting: Whereas it is humbly shown to us by our lovite *A.B.* [*insert designation*], complainer, against *C.D.* [*insert designation*], that [*set*

forth as concisely as possible the document on which the inhibitor proceeds]: Our will is herefore, and we charge you, that ye lawfully inhibit the said *C.D.*, personally or at his dwelling place if within Scotland, and if furth thereof at the office of the keeper of the record of edictal citations at Edinburgh, from selling, disposing, conveying, burdening, or otherwise affecting his lands or heritages (c) to the prejudice of the complainer; and that ye cause register these our letters and execution hereof in the general register of inhibitions at Edinburgh for publication to our lieges. Given under our signet at Edinburgh this day of in the year .

(a) Letters of inhibition may be used either on a liquid document of debt, such as a bill, or decree, or on a depending summons. But as a warrant of inhibition may now be inserted in the will of a summons (see note (b), *ante*, p. 285), letters of inhibition are seldom used on a depending summons.

(b) The “&c.” stands for the words “by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith;” and these words must be engrossed in the letters of inhibition to be signeted.

(c) In the old form moveables were mentioned as well as heritable estate, although the invariable practice restricted inhibition to the latter.

157. *No Inhibition to have effect against acqui-
renda, unless in case of Heir under Entail or other in-
defeasible Title* (a).—No inhibition to be recorded (b)
from and after the 31st day of *December* 1868 (c) shall
have any force or effect as against any lands to be ac-
quired by the person or persons against whom such
inhibition is used after the date of recording such
inhibition, or of recording the previous notice thereof
prescribed by this Act (d), as the case may be: Pro-
vided always, that where such inhibition is used against
a person or persons who shall thereafter succeed to any
lands which, at the date of recording the inhibition or
previous notice thereof, as the case may be, were

destined to such person or persons by a deed of entail, or by a similar indefeasible title (*e*), then and in that case such inhibition shall affect the said person or persons in so far as regards the lands so destined, and to which he or they shall succeed as aforesaid, but no further (*f*).

(*a*) This section is a new enactment, thus taking effect from and after 31st December 1868.

Its object is to prevent inhibitions from affecting heritable estate acquired by an inhibited person after the date of the inhibition, unless such estate is destined to him by a deed of entail or other indefeasible title. Formerly inhibitions reached any heritable property subsequently acquired, provided the letters of inhibition were so expressed as to cover it, thus adding very much to the length of the searches required.

(*b*) In the general register of sasines; see note (*b*), *ante*, p. 285.

(*c*) Viz., the date of the commencement of this Act.

(*d*) Viz., in section 155, *ante*, p. 284.

(*e*) Such as an antenuptial contract of marriage.

(*f*) The object of this provision is to prevent an heir of entail, &c., who has raised money on his indefeasible title, defeating his creditors by his acts after succeeding to the estate.

158. *Inhibitions on depending Summons to be recalled on Petition to Lord Ordinary* (*a*).—From and after the commencement of this Act (*b*) it shall be competent to the Lord Ordinary in the Court of Session, before whom any summons containing warrant for inhibition shall be enrolled as judge therein, or before whom any action, on the dependence whereof letters of inhibition have been executed, has been or shall be enrolled as judge therein (*c*), and to the Lord Ordinary on the Bills in time of vacation (*d*), on the application of the defender or debtor by petition duly intimated to the creditor or pursuer, to which answers may be ordered, to recall or restrict such inhibition on caution, or without caution, and dispose of the ques-

tion of expenses (*e*), as shall appear just; provided that his judgment shall be subject to the review of the Court by a reclaiming note duly lodged within ten days from the date thereof.

(*a*) This section is a new enactment, thus taking effect from and after 31st December 1868.

Its object is to provide a simple mode by which inhibition proceeding on a warrant in a depending summons may be recalled or restricted, in the same manner as arrestments under 1 and 2 Vict. c. 114, sec. 20 (the Personal Diligence Act). Previously the only competent mode was by presenting a petition to the Inner House.

Under section 42 of the Conveyancing Act, inhibitions prescribe in five years, unless renewed by being registered again every five years.

(*b*) Viz., 31st December 1868.

(*c*) The present enactment applies only to cases where there is a depending summons containing a warrant of inhibition; in all other cases the petition for recall must still be presented to the Inner House.

(*d*) If the cause has been removed by reclaiming note to the Inner House, the petition must still be presented to the Inner House. In the case of *Greig*, 20th July 1866, 4 Macph. 1103, a petitioner prayed the Inner House to remit to the Lord Ordinary on the Bills in vacation to recall an inhibition; but the Court refused to do so, on the ground that this was not one of the matters on which the *nobile officium* of the Court could be exercised by the Lord Ordinary on the Bills in vacation. This, however, was prior to the present enactment; and it is thought that the Court will not now refuse to make such a remit where it is important to have an inhibition recalled before the next session of the Court.

(*e*) The question of expenses should be disposed of, or at least reserved, in the petition process;—*Dobie v. Duncanson*, 18th June 1872, 10 Macph. 810.

159. *Litigiosity not to begin before date of registration of Notice of Summons* (*a*).—It shall be competent to register in the general register of inhibitions a notice of any signeted summons of reduction of any conveyance or deed of or relating to lands (*b*), and in the register of adjudications a notice of any signeted summons of adjudication or of constitution and adjudi-

cation combined for debt or in security or in implement (*c*), which notice shall set forth the names and designations of the pursuer and defender of such action and the date of signeting such summons in the form or as nearly as may be (*d*) in the form of Schedule (RR.) hereto annexed; and no summons of reduction, constitution, adjudication, or constitution and adjudication combined, shall have any effect in rendering litigious the lands to which such summons relates, except from and after the date of the registration of such notice.

(*a*) This section is a new enactment, thus taking effect from and after 31st December 1868.

Its object is to alter the date at which an action may render lands litigious—that is to say, secure the pursuer against the voluntary deeds of the proprietor. Previously, the mere execution of a summons to attach the lands of a debtor, or to annul a person's title to an estate, created litigiosity, although third parties transacting onerously and *in bona fide* with the debtor or apparent owner could not discover by searching the records that there was any such impediment. The present enactment remedies this defect in our system of registration, by making it necessary to register a notice of any summons that is to have the effect of creating litigiosity.

Section 155 (*supra*, p. 284), contains a similar enactment as to litigiosity arising from the execution of inhibition.

Page 292, end of note (*a*).

As to the period for which the Register of Inhibitions requires to be searched for a notice of litigiosity, see marginal note, *post*, p. 387.

(*b*) Including all heritable subjects, securities, and rights; see interpretation clause (section 3, paragraph 13), *ante*, p. 8.

(*c*) As to actions of adjudication, and of constitution and adjudication, see sections 59 to 62, *ante*, p. 137 *et seq.*

(*d*) There must be no actual deviation from the form here prescribed.

SCHEDULE (RR.)

Notice of Summons of Reduction, Adjudication, &c.

Notice of summons of reduction [*or of adjudication, or of constitution and adjudication, as the case may be*].—*A.B.* [*insert designation of pursuer*] against *C.D.* [*insert designation of defender*].—Signeted [*insert date of signeting*].

E.F., W.S. [*or S.S.C.*] Agent.

160. *Right to Heirship Moveables abolished (a).*—From and after the passing of this Act no heir of line of a party deceased shall be entitled to claim in that character any portion of the moveable estate of such predecessor as heirship moveables, such claim being hereby abolished.

(a) This action is a new enactment, taking effect from and after the passing of the Act, viz., 31st July 1868.

Heirship moveables were the best of certain kinds of moveable goods to which an heir of line was entitled “from the presumed intention of the deceased that his principal dwelling-house, and the farm which he kept in his own natural possession for the use of his family, might go to the heir not quite dismantled by the executors.”—*Ersk.* iii. 8, 17.

161. *Judgment of Lord Ordinary on the Bills subject to review of Inner House, and Judgments in certain cases to be final (a).*—Any judgment pronounced by the Lord Ordinary (b) in virtue of this Act shall be subject to review by a reclaiming note in ordinary form; and the judgment of either Division of the Court upon such reclaiming note, or upon any advocacy or (c) appeal, shall be subject to review by appeal to the House of Lords, or in any other competent mode or form; but the judgments of the Lord Ordinary and of the Court respectively, if not so brought under review, and whether the same shall have been pronounced in absence of the respondent or not, shall be final, and not subject to review in any mode or form whatever (d); provided always, that the judgments of the Lord Ordinary in petitions relating to the forfeiture or relinquishment of superiority under this or any of the repealed Acts, if not so brought under review, and the judgment of either Division of the Court of Session upon a reclaiming note against such judgment of the Lord Ordinary, whether such judgment shall have been pronounced in absence of the respondent or not, shall be final and conclusive, and not subject to review in any mode or form whatever (e); and it shall be competent to the Lord Ordinary, or to either Division of the Court reviewing any judgment of the

Lord Ordinary, if it shall appear to him or them to be just in the whole circumstances of the case, to find and decern in ordinary form for the expenses of any proceedings.

(a) This section re-enacts, with slight alterations, the provisions of 10 and 11 Vict. c. 47, sec. 20, which took effect from and after 15th November 1847, as regards procedure in services of heirs, and 10 and 11 Vict. c. 48, sec. 20, which took effect from and after 30th September 1847, as regards procedure in forfeiting superiorities, and in actions of constitution and adjudication; and it extends these provisions to all judgments pronounced by the Lord Ordinary in virtue of this Act, such as in the adjustment of Crown charters.

Its object is merely to regulate the procedure in bringing under review judgments pronounced under and in terms of the provisions of the Act.

(b) Including the Lord Ordinary on the Bills.

(c) The process of advocation is now abolished by section 64 of the Court of Session Act of 1868 (31 and 32 Vict. c. 100).

(d) Of course the respondent must receive due intimation of the proceedings. The use of the word "respondent" in this clause restricts the enactment to the case of a respondent in an advocation, appeal, or reclaiming note. No finality, therefore, is conferred by this clause on decrees in absence pronounced by the Lord Ordinary.

(e) Petitions for the forfeiture or relinquishment of superiorities are now incompetent; see note (a), *ante*, p. 201. This clause must therefore be read as applying only to judgments pronounced prior to 1st October 1874.

162. *Court of Session may fix and regulate Fees (a).*
—It shall be lawful for the Court of Session from time to time to pass Acts of Sederunt fixing and regulating the fees payable to town clerks and keepers of registers of sasines in burghs for and with respect to all deeds, conveyances, and proceedings under this Act, and the recording of the same; and the said Court may either make a general table of fees which shall be applicable to all the burghs in *Scotland*, or may make special tables of fees which shall be applicable to any one or more of such burghs, as they think fit; and the tables of fees applicable to each burgh shall come into operation on the death, resignation, or removal of any town clerk of such burgh who was appointed prior to the 8th day of *March* 1860; and it shall not be lawful

for any town clerk, or the keeper of the register of sasines of any burgh, who shall have been appointed after the said 8th day of *March* 1860, to demand or receive any higher fees for or in respect of any deeds or conveyances or proceedings under this Act, or the recording thereof, than the fees specified in the table which for the time shall be applicable to such burgh; and the said Court may meet for the purpose of passing and may pass all such Acts of Sederunt and Rules of Court as they deem proper for carrying into effect the purposes of this Act, and that either during session or vacation, and may from time to time repeal Acts of Sederunt and Rules of Court, or alter such Acts and rules of Court and tables of fees: Provided, that all Acts of Sederunt and Rules of Court passed under the authority of this Act shall, within one month after the date thereof, be transmitted by the Lord President of the said Court to one of Her Majesty's principal Secretaries of State, that the same may be laid before both Houses of Parliament; and until such Act or Acts or Rule or Rules of Court shall be passed, all Acts of Sederunt and Rules of Court now in force passed under the authority of any of the Acts of Parliament hereby repealed, and all tables of fees thereby sanctioned, shall remain in force as Acts of Sederunt, Rules of Court, and tables of fees for the purposes of this Act.

(a) This section consolidates the provisions of the Acts now repealed, as to the fees payable to town clerks, viz., 8 and 9 Vict. c. 31, sec. 11; 10 and 11 Vict. c. 50, sec. 12; and 23 and 24 Vict. c. 143, sec. 24; and also various enactments giving power to the Court of Session to pass Acts of Sederunt in order to carry into effect the purposes of the Acts, viz., 10 and 11 Vict. c. 47, sec. 28; 10 and 11 Vict. c. 48, sec. 21; 10 and 11 Vict. c. 49, sec. 11; and 10 and 11 Vict. c. 51, sec. 28.

The Acts of Sederunt now in force in virtue of this enactment have been already quoted or referred to under the appropriate sections of this Act.

163. *Old Forms of Conveyances may be used (a).—* Nothing contained in this Act shall prevent the constitution, transmission, completion, or extinction of

Page 295, end of note (a).

By Act of Sederunt of 4th July 1882, the Court of Session, in exercise of the powers conferred upon them by the above section, enacted and declared that "From and after the 1st October 1882, there shall be a uniform scale of registration fees payable to the

keepers of the Registers in all boroughs, and that the scale shall be graduated according to the value of the property, or the amount in a deed of security, as follows:—*For every page of 200 words or under.* And in addition, *for the writ and certificate*—Not exceeding £50,—*ss.*, 2s. 6d.; above £50, but not exceeding £100,—*ss.*, 3s. 6d.; above £100, but not exceeding £500,—*ss.*, 5s.; above £500, but not exceeding £1000,—*ss.*, 3d., 5s.; above £1000, but not exceeding £2000,—*ss.*, 6d., 5s.; above £2000, but not exceeding £5000,—*ss.*, 6d., 7s. 6d.; above £5000,—*ss.*, 7s. 6d. Where the writs themselves do not show the value of the property, a statement of the value, and showing how the value is ascertained, dated and signed by the agent in giving in the writ, must be indorsed on it, otherwise the maximum rate shall be charged, viz., 3s. per page, and 7s. 6d. for the certificate. The statement of value shall be accompanied by a document or documents instructing its accuracy, such as a certified excerpt from the Valuation Roll, &c.

"It is further declared that this Act of Sederunt does not apply to the case of any Town-Clerk who was appointed prior to the 8th day of March 1860."

land rights, or of securities affecting lands, in the forms which were in use or competent for these purposes prior to the passing of the Acts hereby repealed (*b*), except in so far as such prior forms are hereby expressly abolished (*c*); and, notwithstanding the repeal of the said Acts, the same shall be held to be still in force so far as regards any reference which may be made to them or any of them in any statute not hereby repealed, and to the effect of giving full effect to such reference (*d*).

(*a*) This section is, in point of form, a new enactment; but it only carries out the provisions of the Acts now repealed, which in most cases introduced improved forms without rendering the old forms incompetent.

The Conveyancing Act, however, has expressly abolished many old forms, and has also indirectly rendered incompetent or superseded many more. The mode in which the various sections of the present Act have been printed shows the nature and extent of the alteration thus effected.

(*b*) As to the Acts repealed, see section 4, *ante*, p. 9.

(*c*) The forms expressly abolished by the present Act are briefs of service and the procedure under them (see *ante*, p. 90), letters of charge in actions of constitution and adjudication (see *ante*, p. 138), and signatures in Exchequer and relative procedure (see *ante*, p. 145).

(*d*) For example, in the Registration of Leases Act of 1857 (20 and 21 Vict. c. 26, sec. 20).

SCHEDULES REFERRED TO IN THE FOREGOING ACT.

SCHEDULE (A.) No. 1. Printed *ante*, p. 12.

No. 2. Printed *ante*, p. 14.

SCHEDULE (B.) No. 1. Printed *ante*, p. 23.

No. 2. Printed *ante*, p. 28.

SCHEDULE (C.) Printed *ante*, p. 36.

SCHEDULE (D.) Printed *ante*, p. 38.

SCHEDULE (E.) Printed *ante*, p. 39.

SCHEDULE (F.) No. 1. Printed *ante*, p. 42.

No. 2. Printed *ante*, p. 42.

- SCHEDULE (G.) Printed *ante*, p. 45.
- SCHEDULE (H.) No. 1. Printed *ante*, p. 49.
No. 2. Printed *ante*, p. 49.
No. 3. Printed *ante*, p. 50.
- SCHEDULE (I.) Printed *ante*, p. 53.
- SCHEDULE (J.) Printed *ante*, p. 56.
- SCHEDULE (K.) Printed *ante*, p. 58.
- SCHEDULE (L.) Printed *ante*, p. 62.
- SCHEDULE (M.) No. 1. Printed *ante*, p. 74.
No. 2. Printed *ante*, p. 75.
- SCHEDULE (N.) Printed *ante*, p. 78.
- SCHEDULE (O.) Printed *ante*, p. 86.
- SCHEDULE (P.) Printed *ante*, p. 95.
- SCHEDULE (Q.) Printed *ante*, p. 96.
- SCHEDULE (R.) No. 1. Printed *ante*, p. 131.
No. 2. Printed *ante*, p. 131.
- SCHEDULE (S.) Printed *ante*, p. 148.
- SCHEDULE (T.) No. 1. Printed *ante*, p. 166.
No. 2. Printed *ante*, p. 167.
No. 3. Printed *ante*, p. 167.
No. 4. Printed *ante*, p. 168.
- SCHEDULE (U.) No. 1. Printed *ante*, p. 171.
No. 2. Printed *ante*, p. 173.
- SCHEDULE (V.) No. 1. Printed *ante*, p. 188.
No. 2. Printed *ante*, p. 188.
No. 3. Printed *ante*, p. 190.
No. 4. Printed *ante*, p. 190.
- SCHEDULE (W.) No. 1. Printed *ante*, p. 194.
No. 2. Printed *ante*, p. 196.
No. 3. Printed *ante*, p. 198.
- SCHEDULE (X.) No. 1. Printed *ante*, p. 202.
No. 2. Printed *ante*, p. 203.
No. 3. Printed *ante*, p. 203.

- SCHEDULE (Y.) No. 1. Printed *ante*, p. 207.
No. 2. Printed *ante*, p. 208.
No. 3. Printed *ante*, p. 208.
No. 4. Printed *ante*, p. 209.
- SCHEDULE (Z.) No. 1. Printed *ante*, p. 209.
No. 2. Printed *ante*, p. 210.
- SCHEDULE (AA.) No. 1. Printed *ante*, p. 204.
No. 2. Printed *ante*, p. 204.
No. 3. Printed *ante*, p. 205.
- SCHEDULE (BB.) No. 1. Printed *ante*, p. 212.
No. 2. Printed *ante*, p. 212.
No. 3. Printed *ante*, p. 213.
- SCHEDULE (CC.) No. 1. Printed *ante*, p. 215.
No. 2. Printed *ante*, p. 215.
No. 3. Printed *ante*, p. 217.
- SCHEDULE (DD.) Printed *ante*, p. 226.
- SCHEDULE (EE.) Printed *ante*, p. 226.
- SCHEDULE (FF.) No. 1. Printed *ante*, p. 228.
No. 2. Printed *ante*, p. 236.
No. 3. Printed *ante*, p. 237.
- SCHEDULE (GG.) Printed *ante*, p. 242.
- SCHEDULE (HH.) Printed *ante*, p. 244.
- SCHEDULE (II.) Printed *ante*, p. 246.
- SCHEDULE (JJ.) Printed *ante*, p. 249.
- SCHEDULE (KK.) Printed *ante*, p. 250.
- SCHEDULE (LL.) Printed *ante*, p. 87.
- SCHEDULE (MM.) Printed *ante*, p. 256.
- SCHEDULE (NN.) Printed *ante*, p. 258.
- SCHEDULE (OO.) Printed *ante*, p. 260.
- SCHEDULE (PP.) Printed *ante*, p. 286.
- SCHEDULE (QQ.) Printed *ante*, p. 288.
- SCHEDULE (RR.) Printed *ante*, p. 292.

37 & 38 VICTORIA,

CHAP. 94.

An Act to amend the Law relating to Land Rights and Conveyancing, and to facilitate the Transfer of Land, in Scotland.—[7th August 1874.]

[“The Conveyancing (Scotland) Act, 1874.”]

WHEREAS it is expedient to amend the law relating to land rights and conveyancing (a), and to facilitate the transfer of land, in Scotland (b):

Be it therefore enacted by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

(a) The provisions of the Act as to conveyancing are not restricted to deeds relating to land. Thus sections 38, 39, and 41, which deal with the execution of deeds, are expressly applicable to all deeds, “whether relating to lands or not;” while both section 40, which provides that every holograph writing of a testamentary character is to be presumed to have been executed of the date it bears, and section 56, which regulates the execution of deeds by companies registered under the Acts of 1862 and 1867, are clearly applicable to deeds relating to moveables as well as to deeds relating to land.

(b) Almost every section of the Act effects a considerable change on the previous law and practice. The most important sections are—(1) section 4, which abolishes charters and writs by progress, and makes infeftment equivalent to entry with the superior; (2) section 9, which vests in every heir entitled to succeed to lands a personal right thereto, by his mere survivance of the person to whom he is entitled to succeed; (3) sections 15, 16, 17, 18, and 19, which render the redemption or commutation of uncertain casualties compulsory on superiors, and section 23, which abolishes such casualties in future feus; (4) section 25, which abolishes the distinction between burgage and feudal subjects; (5) section 34, which shortens the period of the positive prescription as to titles to land;

and (6) sections 38 and 39, which relax the strict formalities previously required in the execution and authentication of deeds.

1. *Short title.*—This Act may be cited for all purposes as “The Conveyancing (Scotland) Act, 1874 (a).”

(a) Sections 62, 63, 64, and 65 of the Act stand in a peculiar position as regards citation, as they not only repeal various sections of the Consolidation Act of 1868, but also substitute amended sections which are to be deemed and taken to be sections of the latter Act. The proper mode of citing these sections is therefore the following:—

Section 62 of “The Titles to Land Consolidation (Scotland) Act, 1868,” and section 4 of “The Titles to Land Consolidation (Scotland) Amendment Act, 1869,” as repealed and re-enacted by section 62 of “The Conveyancing (Scotland) Act, 1874.”

Section 125 of “The Titles to Land Consolidation (Scotland) Act, 1868,” as repealed and re-enacted by section 63 of “The Conveyancing (Scotland) Act, 1874.”

Section 127 of “The Titles to Land Consolidation (Scotland) Act, 1868,” as repealed and re-enacted by section 64 of “The Conveyancing (Scotland) Act, 1874.”

Section 129 of “The Titles to Land Consolidation (Scotland) Act, 1868,” as repealed and re-enacted by section 65 of “The Conveyancing (Scotland) Act, 1874.”

2. *Commencement of Act.*—This Act shall, except where otherwise provided (a), come into operation on the 1st day of October 1874, which date is hereinafter referred to as the commencement of this Act.

(a) Section 27, which renders the word “dispone” no longer essential in any conveyance of heritage, takes effect at an earlier date than the commencement of the Act, as it is made applicable to all deeds coming into operation after the passing of the Act., viz., 7th August 1874. Section 34, which shortens the period of the positive prescription, is the only part of the Act the operation of which is postponed, that section not being pleadable in any action commenced prior to 1st January 1879.

Several of the provisions of the Act are retrospective in their operation. Thus section 11 provides that an error as to the character in which an heir is entitled to succeed shall not invalidate his title, whether made up before or after the commencement of the Act. Under section 25, the titles of feus granted before the commencement of the Act are unchallengeable on the ground that they were of land held

by burgage tenure, or that such titles have been recorded in the burgh register of sasines. Under section 29, titles made up before the commencement of the Act are not challengeable on the ground that two or more general dispositions have been used as connecting links, or that a general disposition forming part of the series does not contain a clause of assignation of writs. Under section 31, a general service to a person who died infest is assimilated to a *mortis causa* general disposition, though such service has been expedite prior to the commencement of the Act, provided the heir expediting it was alive at that date. Under section 51, a notarial instrument expedite on an English or Irish will prior to the commencement of the Act is not challengeable on the ground that there was presented to the notary, not the will itself, but only the probate or an exemplification thereof. Section 52 renders decrees of service dated before the commencement of the Act unchallengeable on certain grounds. Section 53 secures from challenge notarial instruments expedite on heritable securities under section 19 of the Consolidation Act, whether before or after the commencement of the present Act. Section 54, which prevents a recorded deed or instrument being challenged on the mere technical ground that there are erasures in the record, appears to be retrospective in its operation. Section 55 contains a clause with retrospective effect with reference to the rights of heritable creditors already in possession under their securities. Under section 61, it is not competent to object on certain grounds to any specification and reference to any particular description of lands contained in any deed or instrument recorded prior to the commencement of the Act.

Lastly, sections 62, 63, 64, and 65 substitute amended sections in place of repealed sections of the Consolidation Act, and declare that the sections so substituted shall be deemed and taken to be the original sections. These sections therefore are retrospective in their operation, drawing back to the commencement of the Consolidation Act, viz., 31st December 1868.

3. Interpretation (a).—The following words and expressions in this Act shall have the several meanings hereby assigned to them; that is to say,

- (1) "Land" or "lands" shall include all subjects of heritable property which are or may be held of a superior according to feudal tenure, or which prior to the commencement of this Act have been or might have been held by burgage tenure, or by tenure of booking:
- (2) "Estate in land" shall mean any interest in land, whether in fee, liferent, or security, and whether beneficial or in trust, or any real burden

on land, and shall include an estate of superiority :

- (3) "Superior" shall include the Crown, the Prince and Steward of Scotland, and all subject superiors, and shall also include mid-superiors; "superiority" shall include mid-superiority :
- (4) "Conveyance" and "deed" and "instrument" shall each have the meaning attached thereto by "The Titles to Land Consolidation (Scotland) Act, 1868," and "The Titles to Land Consolidation (Scotland) Amendment Act, 1869" (b), and shall also, when used in this Act, include all the deeds, instruments, decrees, petitions, and writings specified in this Act; and the words "heritable securities" and "securities" shall have the meaning attached thereto by the said recited Acts (c), and shall also, when used in this Act, include real burdens and securities by way of ground annual :
- (5) "Infeftment" shall include every title to an estate in land requiring and admitting of infeftment which is duly recorded in the appropriate register of sasines :
- (6) "Feu" shall include "blench," and "feu-duty" shall include "blench-duty."
- (7) "Casualties" shall include the relief duty payable on the entry or succession of an heir, the composition or other duty payable on the entry of a singular successor, whether by law or under the conditions of the feu, and all payments exigible in lieu of such duties and compositions, and all periodical fixed sums or quantities which may be stipulated for under this Act :
- (8) "Sheriff" shall include steward, sheriff substitute, and steward substitute.

(a) The paragraphs into which this section is divided are not numbered in the Act itself, but for facility of reference they are here printed with consecutive numbers prefixed to them.

The following is a list, alphabetically arranged, of the words

above interpreted, with a numeral appended to each showing the No. of the paragraph in which the interpretation is given.

Casualties, 7.	Infestment, 5.
Conveyance, 4.	Instrument, 4.
Deed, 4.	Land or lands. 1.
Estate in land, 2.	Securities, 4.
Feu, 6.	Sheriff, 8.
Feu-duty, 6.	Superior, superiority, 3.
Heritable securities, 4.	

(b) As to the meaning attached to the words "conveyance," "deed," and "instrument" by the Acts here referred to, see section 3 of the Consolidation Act, paragraphs 7 and 9, *ante*, pp. 6 and 7.

(c) as to the meaning attached to the words "heritable securities" and "securities" by the Acts here referred to, see section 3 of the Consolidation Act, paragraph 10, *ante*, p. 7.

4. (a) When lands (b) have been feued, whether before or after the commencement of this Act,—

(1) *Renewal of investiture abolished* (c).—It shall not, notwithstanding any provision, declaration, or condition to the contrary in any statute in force at the passing of this Act (d), or in any deed, instrument, or writing, whether dated before or after the passing of this Act, be necessary, in order to the completion of the title of any person having a right to the lands in whole or in part, whether such right shall have been acquired by succession, bequest, gift, or conveyance (e), that he shall obtain from the superior (f) any charter, precept, or other writ by progress; and it shall not be competent for the superior (f) in any case to grant any such charter, precept, or other writ by progress (g): Provided always, that nothing in this Act contained shall prevent the granting (h) of charters of novodamus (i) or precepts or writs from Chancery (k) or of clare constat (l), or writs of acknowledgment (m):

(a) The object of this important section is to abolish the feudal system as far as regards the renewal by superiors of their vassals' investitures, without however impairing any substantial right pre-

viously competent to either superior or vassal in consequence of such renewal. The section is divided into four sub-sections, which are here annotated separately.

(b) Under the interpretation clause (section 3, paragraph 1), *ante*, p. 301, "lands" include "all subjects of heritable property " which are or may be held of a superior according to feudal tenure, " or which prior to the commencement of this Act have been or " might have been held by burgage tenure, or by tenure of " booking;" and section 25 abolishes the distinction between estates in land held burgage and estates in land held feu. The provisions of this section are therefore applicable to every case in which there are separate estates of superiority and property in the same subjects.

(c) The object of this sub-section is to abolish the necessity, under which a person acquiring right to a feudal estate was previously laid, of resorting to the superior for an entry or renewal of the investiture, and to render incompetent (with a few exceptions) the deeds used to effect such entries.

(d) *Viz.*, 7th August 1874. The statutes referred to are chiefly private Acts of Parliament with reference to entailed estates.

(e) The word conveyance includes, *inter alia*, decrees, warrants to make up titles, &c.; see interpretation clause (section 3, paragraph 4), *ante*, p. 302.

(f) The word "superior" includes the Crown, the Prince and Steward of Scotland, all subject superiors, and also mid-superiors; see interpretation clause (section 3, paragraph 3), *ante*, p. 302.

(g) The charters, precepts, and other writs by progress here abolished are charters of resignation, charters of confirmation, charters of resignation and confirmation, charters of confirmation combined with precepts of *clare constat*, charters of adjudication, charters of sale, writs of resignation, writs of confirmation, and apparently writs of investiture, (as to which see *ante*, p. 214), and procuratories and instruments of resignation *ad remanentiam* (as to which see note (p), *ante*, p. 20).

(h) A superior granting any of the charters or writs here excepted from the general provisions of this sub-section ought to be infeft at the date of granting them; but his subsequent infeftment will accresce to such deeds, and so validate them; see Bell's Lectures on Conveyancing, 1st ed., p. 1051, 2d ed., p. 1130. For the provision in the next sub-section, that every proprietor who is infeft shall be deemed to be entered with his superior, whether the superior's own title or that of any over superior has been completed or not, does not seem to cover the case of a proprietor who is entered by means of

a charter or writ from a person who has not completed a title to the superiority, and who dies without having done so.

If the superior holds the superiority in liferent only, he cannot grant the charters and writs here mentioned, unless he has the powers of a fiar in regard to the entry of vassals; see Bell's Lectures, 1st ed., p. 1052, 2d ed., p. 1131.

(i) Charters of novodamus are usually granted where the superior and the vassal agree to an alteration of the conditions of the feu right, or where the original charter has been lost, or is in some way defective. In former practice a clause of novodamus was frequently introduced into a charter of resignation after the clause called the *quæquidem*, or into a charter of confirmation after the clause confirming the vassal's disposition and infeftment; but as the present sub-section renders such charters incompetent, this course cannot now be followed. As to the effect of a clause of novodamus in a charter of confirmation in altering the reddendo of an original charter, see the case of *the Magistrates of Inverkeithing v. Ross*, October 30, 1874, 2 Rettie 48.

(k) When the Act was first passed, doubts were entertained whether the words "precepts or writs from Chancery," occurring in this proviso, did not leave it still competent for the Crown and Prince to grant such writs by progress as could no longer be granted by subject superiors; see Mowbray's Analysis, p. 13. It however seems plain, both from other parts of the Act and from the practice following upon it, that the Crown and Prince are in the same position as subject superiors. The word "superior" is declared by the interpretation clause (section 3, paragraph 3), *ante*, p. 302, to include the Crown and the Prince or Steward of Scotland; and the next sub-section provides that every proprietor duly infeft shall be deemed and held to be entered with his immediate superior. Section 57 abolishes the office of presenter of signatures; and section 59 expressly declares that "the provisions of this Act shall apply to "lands held of the Crown and of the Prince, in the same way as to "lands held of a subject superior." Since the commencement of the Act no Crown writs have been granted or applied for, except such as can be competently granted by subject superiors.

It is therefore thought that the only Crown charters, precepts, or writs still competent are original charters (including charters of bastardy, charters of *ultima hæres*, charters upon forfeitures for high treason, and charters of mines and minerals, under the Act of 5th June 1592, not printed in the small edition of the Scotch Acts), charters of novodamus, precepts of *clare constat*, and writs of *clare constat*.

(l) As to precepts and writs of *clare constat*, see *ante*, pp. 168 and 193. They have been excepted from the general abolition of charters and writs by progress on account of their affording a simple and inexpensive mode by which an heir may complete a title to the lands to

which he succeeds. Where, however, the lands are held of the Crown or Prince, the heir must obtain himself served before applying for a precept or writ of *clare constat*; and if he is so served, he can now complete his title by merely taking infeftment. The result is that in practice Crown precepts or writs of *clare constat* are never applied for.

(*m*) A writ of acknowledgment is a writ granted by a debtor in favour of the executors or the heir of a creditor in a heritable security, acknowledging such executors or heir to be in right of the security. See section 63 of this Act.

- (2) *Infeftment to imply entry with superior* (*a*).— Every proprietor (*b*) who is at the commencement of this Act (*c*) or thereafter shall be duly infeft (*d*) in the lands (*e*) shall be deemed and held to be, as at the date of the registration of such infeftment (*f*) in the appropriate register of sasines, duly entered with the nearest superior (*g*) whose estate of superiority in such lands would according to the law existing prior to the commencement of this Act have been not defensible at the will of the proprietor so infeft (*h*), to the same effect as if such superior had granted a writ of confirmation according to the existing law and practice (*i*), and that whether the superior's own title or that of any over superior has been completed or not (*k*), but such implied entry shall not be held to confer or confirm any rights more extensive than those contained in the original charter or feu right of the lands or in the last charter or other writ by which the vassal was entered therein (*l*): Provided always, that nothing herein contained shall be held to validate any subfeu in cases where subinfeudation has been effectually prohibited (*m*); and provided further, that notwithstanding such implied entry, the proprietor last entered (*n*) in the lands, and his heirs and representatives, shall continue personally liable to the superior for payment of the whole feu-duties affecting the said lands, and for performance of the whole

obligations of the feu, until notice of the change of ownership of the feu shall have been given to the superior (*o*), but without prejudice to the superior having all his remedies against the entered proprietor under the entry implied by this Act (*p*), and without prejudice also to the right of the proprietor last entered (*n*) in the lands and his foresaids to recover from the entered proprietor (*q*) of the lands all feu-duties which such proprietor last entered (*n*) in the lands or his foresaids may have had to pay in consequence of any failure or omission to give such notice; and for this purpose all the remedies competent to the superior for recovery of feu-duties (*r*) shall by virtue of this Act be held to be assigned to the proprietor last entered (*n*) in the lands and his foresaids, to the effect of enabling them to recover payment of any sums so paid by them as aforesaid (*s*), but that always under reservation of, and without prejudice to the superior's rights, remedies, and securities for making effectual and recovering all other feu-duties due and to become due to him (*t*); and such notice may be in the form of Schedule A. hereto annexed, or as nearly in that form as the circumstances in each particular case will permit (*u*). In the event of the proprietor last entered (*n*) in the lands or his foresaids desiring to preserve evidence of his or their having sent such notice, it shall be sufficient (*v*) if a copy of such notice, certified by the sender thereof as having been delivered or put into the post office by him in presence of two witnesses, who shall also subscribe the certificate, is preserved, or that the notice is acknowledged by the superior or his agent to have been received, either on a duplicate thereof or by a separate acknowledgment, and the superior or his agent on receiving such intimation in duplicate, with a fee of

five shillings, shall, if required, be bound to return one of the copies with an acknowledgment of intimation thereon subscribed by him.

(a) The object of this sub-section is to maintain the feudal relation between superior and vassal notwithstanding the abolition of charters and writs by progress; and this is effected by substituting for an actual entry given by the superior an implied or constructive entry, taking effect *ipso facto* on the vassal's infeftment, but subject to this condition, that the superior, who may have no knowledge of the implied entry, shall be entitled to regard the former proprietor as still his vassal till he shall have received notice of the change of ownership.

(b) Including mid-superiors and the vassals both of the Crown and of subject-superiors.

(c) Viz., 1st October 1874. This clause makes the enactment in a certain sense retrospective in its operation, the implied entry being deemed to have taken place at the date of the infeftment, although such infeftment may have been taken prior to the commencement of the Act.

(d) Whether by instrument of sasine, notarial instrument, or deed or conveyance duly recorded in the appropriate register of sasines.

(e) See note (b) to sub-section 4, *ante*, p. 304.

(f) Infeftment includes every title to an estate in land requiring and admitting of infeftment which is duly recorded in the appropriate register of sasines; "estate in land" meaning any interest in land, whether in fee, liferent, or security, and whether beneficial or in trust, or any real burden on land, and including an estate of superiority. See interpretation clause (section 3, paragraphs 5 and 2), *ante*, p. 302 and 301.

(g) See notes (f) and (k) to sub-section 1, *ante*, p. 304 and 305.

(h) According to the law existing prior to the commencement of the Act, an estate of superiority was defeasible at the will of a proprietor who had taken infeftment on a deed or conveyance with an alternative holding, expressed or implied. Till he obtained an entry from the superior, his infeftment was presumed to be on the *de me* precept, and his author thus retained an estate of mid-superiority. But the new proprietor was still entitled to apply to the real superior for an entry by confirmation or resignation; and on his obtaining such entry his prior infeftment was presumed to have been on the *a me* precept, the estate of mid-superiority being thus

evacuated. But as long as the estate of mid-superiority was not so evacuated, the heir of the former proprietor could make up a title thereto and become the entered vassal of the real superior; and where the entry of singular successors was untaxed, it was frequently arranged on the death of the last entered vassal that his heir should apply for an entry from the superior, so as to save the new proprietor from the payment of the composition of a year's rent. The question whether this technical device has been rendered incompetent by the present section of the Conveyancing Act has already been raised in three cases. In the first of these, *Ferrier's Trs. v. Bayley*, 26th May 1877, 4 Rettie 738, it was held by the Second Division (*diss.* Lord Gifford), affirming the judgment of the Lord Ordinary (Curriehill), that the implied entry given by the present section to every proprietor duly infeft had the effect of extinguishing the mid-superiority, and that a singular successor of the person last infeft was bound to pay composition instead of relief-duty, although he possessed the character of heir to the person who would have been the mid-superior but for the provisions of the Act extinguishing the mid-superiority. This decision was followed by the First Division (*diss.* Lord Deas) in the case of *Rossmore's Trs. v. Brownlee and Others*, 23d November 1877, 5 Rettie 201, in which it was held no longer competent for a singular successor infeft on an *a me vel de me* precept unconfirmed, on a casualty of composition being demanded from him, to tender the heir of the last vassal for an entry on payment of relief-duty merely. Lastly, in the case of *Sivright v. Straiton Estate Co.*, 12th June 1878, 5 Rettie 922, it was held that a singular successor in whose favour a disposition was executed and recorded in 1876 was liable to the superior in payment of a casualty of composition, although the superior had in 1873 granted a precept of *clare constat* in favour of the heir (who was still in life) of the last entered vassal, which however had not been recorded before the commencement of the Conveyancing Act. These decisions, however, have not given complete satisfaction to the legal profession (see *Journal of Jurisprudence*, vol. xxi.), and it is understood that another case raising the same question is to be appealed to the House of Lords for the purpose of obtaining a final decision on a matter of such importance. In the event of the appeal being unsuccessful, it is to be hoped that the Legislature will intervene to prevent an Act which was designed to simplify conveyancing from operating so as to deprive proprietors of a privilege whose value is known only to practising conveyancers. In the meantime, when a person purchases lands the entry of singular successors to which is untaxed, it is recommended that he should arrange with the seller that the holding should be *de me*, for payment to the seller of a feu-duty of trifling amount. The estate of mid-superiority thus constituted would not be defeasible at the will of the vassal; and the casualty of composition would consequently not be exigible as long as the seller's heirs were willing to make up titles to that estate. This course, however, cannot be followed where subinfeudation has been effectually prohibited. In that case, the only way by which a

Page 309.

It is now authoritatively settled by the judgment of the House of Lords that the technical device here mentioned is no longer competent, and consequently that a singular successor who has taken infestment is liable in payment of a year's rent in name of composition wherever the feu has been granted prior to 1st October 1874, and the entry of singular successors has not been taxed. — *Lamont v. Rankin's Trs.*, 28th Feb. 1879, 6 R. 739, affirmed Feb. 27, 1880, 7 R. (H.L.) 10. But if the singular successor abstains from taking infestment his personal right interposes no obstacle to the heir of the last vassal making up a title to the feu, and thus avoiding the payment of anything more than a relief-duty. — *Duke of Hamilton v. Guild*, 6th July 1883, 20 Scot. Law Rep. 735 (where the singular successor was a trustee in a sequestration whose only title was his Act and Warrant); and *Hope v. Duke of Hamilton*, July 6, 1883, 20 Scot. Law Rep. 738 (where the singular successors were trustees under the *mortis causa* settlement of the last vassal). In the last mentioned case another point was also decided. A proprietor duly infeft and entered with his superior had subsequently, by his marriage - contract, conveyed the lands to himself and his wife, and the longest liver of them, in conjunct fee and life-

rent, for his wife's life rent allanarly, and the children of the marriage in fee; and the spouses had been infeft on the contract for their respective rights. There were no children of the marriage. On the vassal's death his heir-at-law was asked by the superior for a composition, on the ground that from the date of the infeftment on the marriage-contract the vassal's title depended on that infeftment, and that therefore the entry of his heir-at-law was the first entry under a destination introducing strangers to the investiture. The Court, however, held that the vassal was not by the infeftment on the marriage-contract infeft of new in the lands, and that his heir-at-law therefore succeeded under the old investiture, and was liable in payment of a relief-duty only.

purchaser can avoid the payment of composition at the death of the last vassal who has paid entry money is to delay taking infeftment (the implied entry introduced by the Conveyancing Act taking place only on infeftment) till the death of that vassal, and then getting the heir to complete a title and carry out his ancestor's conveyance to the purchaser. But this course should be followed only where it seems probable that the last vassal will not long survive, as it is hazardous for a purchaser to remain uninfeft for any length of time.

(i) As to writs of confirmation, see *ante*, p. 185 *et seq.*

This clause has the effect of entering as by confirmation every proprietor holding under an alternative infeftment, express or implied, or under an *a me* infeftment, express or implied; *Morris v. Brisbane*, 21st February 1877, 4 Rettie 515. The result is that an alternative holding has exactly the same effect as an *a me* holding, and that therefore no holding need or should be expressed in a conveyance unless it is designed to create a permanent base right, in which case the holding must be expressed to be *de me*.

According to the former law and practice, superiors were entitled to record in their chartularies all charters and writs by progress granted by them, and to charge their vassals with the expense. When the present Act came into operation, it was contended by some superiors that as the vassal's recorded disposition or other conveyance came in place of a charter, they were entitled to charge the vassal with the expense of entering it in their chartularies. But this contention was negatived by the Court in the case of *the Magistrates of Edinburgh v. Whitehead*, 18th May 1876, 3 Rettie 663.

(k) That is to say, whether the person entitled to the superiority is infeft, or has merely a personal right under an unrecorded conveyance or as heir. The result is, that no proprietor need concern himself with the state of the superiority titles; he has only to take infeftment, and his own title will then be as complete as it can possibly be made. Under the previous law, entries granted by a superior were invalid in the event of the superior dying without having completed a title; see Bell's Lectures on Conveyancing, 1st ed., p. 1051.

(l) This clause merely applies to an implied entry a principle previously applicable to an actual entry under a charter or writ by progress, viz. that in giving or taking an entry either the superior or the vassal, as the case might be, was entitled to disregard the terms of charters and writs by progress on which no distinctive prescriptive possession had followed, and recur to the original charter as showing the measure and extent of the feu-right.—*Hutton v. Macfarlane*, 11th November 1863, 2 Macph. 79; *Boyd v. Bruce*, 20th December 1872, 11 Macph. 243. But although the Act declares that an implied entry shall not be held to confer or confirm any rights more extensive than those contained in the original grant, it does not provide any mode by which the superior may

ascertain, as he formerly could, from time to time on each renewal of the investiture whether a vassal has put on record a deed or instrument inconsistent with the superior's rights and interests. Section 5 of the bill as originally introduced to the House of Commons provided that "where a feu has been or shall be created, subject to conditions and stipulations of such a character as to affect and qualify the feu, such conditions and stipulations, being specified in a deed or instrument duly recorded in the register of sasines, shall, except in so far as extinguished or modified by the operation of prescription or by renunciation or discharge thereof, and whether declared to be real burdens or not, accompany the feu, and run with the lands in all transmissions thereof, and shall be binding upon all persons who are the successors in title of the original feuar, although not repeated or inserted or referred to in all or any of the transmissions thereof." This provision was dropped before the Bill passed through Parliament; but it appears to have been simply declaratory of the common law on the subject. A superior, however, who discovers that a deed or instrument inconsistent with his rights and interests has been recorded in the register of sasines, would do well to raise an action of reduction and of declarator of the terms in which it should have been granted or expressed.

(m) In order to be effectual, a prohibition against subinfeudation must have been made prior to the commencement of the Act, viz., 1st October 1874; see section 22, *post*.

(n) The words "the proprietor last entered" mean the previous proprietor, whether actually or constructively entered.

(o) Under the previous system, the entry given by the superior to a new proprietor operated as a discharge to the former vassal and his representatives of all personal liability for payment of the feu-duties and for performance of any other obligations of the feu. But for this clause, the implied entry given by this section would have had the same effect, although the superior might have no knowledge of the change of vassals.

In order to relieve the previous vassal of his personal liability to the superior, two things are now requisite, (first) the infeftment of the new proprietor, and (second) notice given to the superior of the change of ownership. The previous vassal has no direct means of forcing the new proprietor to take infeftment, but is entitled at common law to be relieved of all feu duties, &c., paid for the period subsequent to the new proprietor's term of entry.

The words "performance of the whole obligations of the feu" do not appear to include the payment of such casualties as can be recovered by means of the new form of action introduced by sub-section 4, as the superior can raise the action only against the successor of the vassal in the lands, whether infeft or not.

(p) In the ordinary case a superior who is aware of the change

of ownership, though he may not have received due notice thereof, should take advantage of the option allowed by this clause, and proceed against the new proprietor, who is the true obligant; see also note (v) *infra*.

(q) That is to say, the new proprietor who has taken infeftment and thus been constructively entered under the provisions of this section.

If the new proprietor has not taken infeftment, this provision is not applicable; but at common law the prior proprietor has a claim of relief against the new proprietor for the feu duties, &c., for the period subsequent to the new proprietor's term of entry to the lands.

(r) The remedies here referred to include poiding of the ground and the superior's hypothec; see Bell's Com. 5th ed., i. 683, and ii. 27.

(s) This implied assignation of the superior's remedies takes effect only where the new proprietor has taken infeftment and so become "the entered proprietor of the lands," and it is applicable only to "sums so paid," that is to say, the feu duties previously referred to.

(t) That is to say, the implied assignation of the superior's remedies is applicable only to the feu duties paid by the previous proprietor, the superior's rights and remedies *quoad* all other feu duties remaining unimpaired.

(u) The directions contained in Schedule A. and the notes thereto appended have, under section 66, the same effect as if they were contained in the body of the Act.

(v) It is thought that this means, not merely sufficient evidence of the notice having been sent, but also sufficient giving of notice to the superior, although he may fail to receive the notice (as, for instance, where it has been sent to the office of edictal citations), provided the directions contained in the Schedule have been duly followed. The safest course, however, is to obtain an acknowledgment of intimation in the manner prescribed by the following clauses of this sub-section.

SCHEDULE A.

FORM OF NOTICE TO BE GIVEN TO A SUPERIOR OF CHANGE OF OWNERSHIP.

[Place and Date.]

Sir,

I hereby intimate to you that (1) has [or have]

now right to ⁽²⁾, which lands [*or* subjects] formerly belonged to ⁽³⁾.

I am, Sir,

Your most obedient servant ⁽⁴⁾.

⁽¹⁾ Here state name, designation, and address of the new proprietor or proprietors of the feu.

⁽²⁾ Here mention the names by which the lands or subjects are generally known, so as to distinguish them to the superior, but without giving any detailed description of the lands or subjects, and if in a town or village mention the number of the street or otherwise distinguish the feu, and if a reference to the feu right will more easily and clearly distinguish the lands or subjects, a reference to the feu right can be given, but the superior shall not be entitled to object either that the name or designation or address of the new proprietor or proprietors of the feu is erroneous, or that the form in which the lands or subjects are referred to is insufficient or erroneous, unless it can be shown that the notice given as to these particulars or any of them was intended to mislead the superior as to the identity of the new proprietor or proprietors of the feu or as to the particular lands or subjects to which the notice should have referred.

⁽³⁾ Insert the name of the last entered vassal, whether by actual entry previous to the commencement of this Act, or by implied entry under it.

⁽⁴⁾ To be signed (but not attested) by the seller of the feu, or by heir or the trustees or executors of a deceased proprietor, or by any one of the trustees or executors for himself and his co-trustees or co-executors, or by an agent of any of these parties.

To be addressed and posted or delivered to the superior or to his known agent, or to the person to whom the feu-duties of the feu have been paid, and in the event of the superior being unknown or doubtful, the notice to be addressed "to the superior" of the lands mentioned in the notice, without name (in the event of the proprietor being unable to ascertain name

of the superior), and to be posted or sent to the keeper of the office of edictal citations in Edinburgh, and published in the register of these citations, and also (where there is doubt as to the superior) to the person or to the agent of the person as to whom such doubt exists.

- (3) *Implied entry not to affect rights of superiors to feu-duties, &c.* (a).—Such implied entry shall not prejudice or affect the right or title of any superior (b) to any casualties (c), feu-duties, or arrears of feu-duties which may be due or exigible in respect of the lands, at or prior to the date of such entry (d); and all rights and remedies competent to a superior (b) under the existing law and practice or under the conditions of any feu right, for recovering, securing, and making effectual such casualties (c), feu-duties, and arrears (f), or for irritating the feu *ob non solutem canonem* (g), and all the obligations and conditions in the feu rights prestable to or exigible by the superior (b), in so far as the same may not have ceased to be operative in consequence of the provisions of this Act (h) or otherwise, shall continue to be available to such superior (b) in time coming; but provided always, that such implied entry shall not entitle any superior (b) to demand any casualty sooner than he could, by the law prior to this Act (i) or by the conditions of the feu right (k), have required the vassal to enter or to pay such casualty as irrespective of his entering.

(a) The object of this sub-section is to guard against the abolition of renewal of investiture carrying with it, as a necessary consequence, the abolition of the pecuniary rights which resulted therefrom. Under the previous system, the entry granted by a superior operated as a discharge of all casualties and arrears of feu-duty (see decisions referred to in the case of the *Lord Advocate v. Lord Rollo*, 19th July 1872, 10 Macph. 1024); and, but for the provisions of the present sub-section, the implied or constructive entry introduced by the preceding sub-section would naturally have had the same effect, although it takes place without the superior's concurrence or

consent. On the other hand, a casualty having been due under the previous system on the occasion of each entry, and infeftment being now made equivalent to entry, a casualty would have been payable on each infeftment, but for the proviso at the end of the present sub-section.

(b) Including the Crown, the Prince, subject-superiors, and mid-superiors; see interpretation clause (section 3, paragraph 3), *ante*, p. 302.

(c) Including relief-duty and composition, all payments in lieu thereof, and all periodical fixed sums stipulated for under section 23; see interpretation clause (section 3, paragraph 7), *ante*, p. 302.

(d) That is to say, as regards casualties, a proprietor infeft, and so impliedly entered, cannot plead his implied entry as a discharge of casualties payable in respect of the death of the last vassal who has paid a casualty, nor (where by the terms of the feu right a taxed composition is payable on the occasion of each sale or transfer of the property, as well as on the occasion of the death of each vassal) as a discharge of casualties payable in respect of a sale or transfer. Nor can he plead the implied entry of intermediate proprietors. Unless otherwise stipulated, casualties are not due or exigible till demanded. See note (d) to the next sub-section, *post*, p. 318.

(e) In the recent case of *Morrison's Trs. v. Webster*, 16th May 1878, 5 Rettie, 800, the Court were called upon to apply this clause to a feu-contract which had been entered into prior to the commencement of the Act, and which contained the following stipulations:—"Declaring that heirs shall successively enter "within six months after the decease of the last vassal, and the "entry money shall bear interest from the lapse of the said six "months till paid, whether demanded or not; and also declaring "that all purchasers or disponees of the vassals in the said subjects "shall be obliged to enter by charter of resignation and be infeft "thereupon within the space of six months from the date of their "respective purchases, and that although their authors be alive at "the time. . . . And which sums of entry money and interest "thereupon shall be and are hereby declared to be real burdens on "the said subjects, and that so often as they shall accresce and become due and payable, and may be sued for and recovered as *debita fundi*." Two compositions having become due under these stipulations, the superior raised an action of pointing of the ground against the last proprietor for the purpose of recovering from him the amount of the compositions. The Lord Ordinary (Rutherford-Clark) held that the stipulated compositions were not and could not be made *debita fundi*, in respect they were payable at uncertain periods; but this judgment was reversed by a majority in the Second Division, the Lord Justice-Clerk and Lord Gifford holding that the sums were *debita fundi*, and so recoverable from the proprietor for

the time being by an action of poinding of the ground. Lord Ormisdale dissented, and the vacancy occasioned by the death of Lord Neaves not having been filled up, this important matter is thus left in a position of uncertainty, the four judges who applied their minds to the question being equally divided.

Page 316, end of note (e).

It has since been incidentally held by the First Division that even where a taxed composition payable to the superior on the death of the vassal is not expressly declared by the feu-contract to be a real burden, it is *ex sua natura debitum fundi*.—*Stewart v. Gibson's Trs.*, Dec. 10, 1880, 8 R. 270. See also *Marquis of Tweeddale's Trs. v. E. of Haddington*, Feb. 25, 1880, 7 R. 620.

(f) As to the rights and remedies competent to a superior at common law for recovering, securing, and making effectual feu-duties and arrears, see Bell's Lectures on Conveyancing, 1st ed., p. 591.

(g) As to declarator of irritancy *ob non solutum canonem*, see Bell's Lectures on Conveyancing, 1st ed., p. 584, and the cases of *Hope v. Aitken*, 18th Jan. 1872, 10 Macph. 347, and *Caledonian Railway Co. v. Watt*, 9th July 1875, 2 Rettie 917.

Page 316, end of note (g).

See also *Sandeman v. Scottish Property Building Co.*, Feb. 21, 1883, 10 R. 614, in which the Second Division refused to grant decree except under reservation of sub-feus granted by the defaulting vassal for a competent avail.

(h) The provisions of the Act abolish the casualty of non-entry, and render inoperative all stipulations that heirs or disponees shall enter with the superior. A clause prohibiting subinfeudation or an alternative holding used frequently to be inserted for the purpose of obliging each purchaser to take an entry, and thus giving the superior right to a casualty upon each transmission of the property; but such a clause is now ineffectual for the purpose; *Morris v. Brisbane*, 21st Feb. 1877, 4 Rettie 515.

(i) Under the previous system, a superior could not raise an action of declarator of non-entry to enforce payment of a casualty as long as the fee was full, that is to say, as long as the last entered vassal was alive, although divested by a conveyance and infeftment thereon. Non-entry was also excluded in a few cases even after the death of the last entered vassal. Thus, where the last entered vassal was a lady whose husband was entitled to courtesy, the lands were not in non-entry during the husband's lifetime; and similarly, where the lands were subject to terce on the death of the last entered vassal, non-entry was excluded to the extent of one-third during the lifetime of the late proprietor's widow. Again, non-entry was excluded by a liferent infeftment, granted or confirmed by the superior, till the death of the liferenter. See *Stair* ii. 4, 23; *Ersk.* ii. 5, 44; and *Duff's Feudal Conveyancing*, p. 477.

The present proviso continues the previous law, to the effect of preventing superiors from claiming casualties as long as non-entry was excluded in any of the instances above mentioned. See *Morris v. Brisbane*, 21st Feb. 1877, 4 Rettie 515, in which it was *inter alia* held that a superior had no claim to a casualty as long as the fee was full.

Supposing that a casualty has been paid since the commencement of the Act, and that there have been several transmissions of the property followed by infeftment, the next casualty will be payable on the death of the person who paid the last casualty, and so forth, the life of the person paying a casualty regulating the payment of the next casualty. See the decision of Lord Curriehill (acquiesced in

by the parties) in the case of *the Leith Heritages Co. v. Edinburgh and Leith Glass Co.*, 8th June 1876, 13 Scot. Law Rep. 731.

Where the casualty is payable by the heir of the last vassal, it is thought that action therefor should not be brought till the expiration of year and day from the date of the ancestor's death, unless the heir has already incurred a passive representation; Bell's Prin., sec. 714. Section 61 of the Consolidation Act, reducing the *annus deliberandi* to six months, applies only to actions brought to attach heritable estate for debt.

(*k*) Where a feu-right granted before the commencement of the Act expressly stipulates that parties acquiring right to the property shall be bound to enter with the superior, or to pay a casualty within a certain period from the date of their acquisition, the fact that the fee is full will not preclude the superior from demanding payment of a casualty thus exigible. But the mode of enforcing payment will depend upon the terms of the feu right, and will require serious consideration. See note (*e*) *ante*, p. 315.

- (4) *Action in lieu of a declarator of non-entry (a).*—No lands (*b*) shall, after the commencement of this Act (*c*), be deemed to be in non-entry (*d*), but a superior (*e*) who would but for this Act be entitled to sue (*f*) an action of declarator of non-entry against the successor of the vassal in the lands, whether by succession, bequest, gift, or conveyance (*g*), may raise in the Court of Session against such successor, whether he shall be infeft or not (*h*), an action of declarator and for payment of any casualty (*i*) exigible at the date of such action (*k*), and no implied entry shall be pleadable in defence against such action (*l*); and any decree for payment in such action shall have the effect of and operate as a decree of declarator of non-entry, according to the now existing law (*m*), but shall cease to have such effect upon the payment of such casualty, and of the expenses (if any) contained in said decree (*n*); but such payment shall not prejudice the right or title of the superior to the rents due for the period while he is in possession of the lands under such decree (*o*) nor to any feu-duties or arrears thereof which may

be due or exigible at or prior to the date of such payment, or the rights and remedies competent to him under the existing law and practice for recovering and securing the same; and the summons in such action may be in or as nearly as may be (*p*) in the form of Schedule B. hereto annexed.

(*a*) This sub-section expressly provides that notwithstanding the death of the last entered vassal and the non-infeftment (and consequent non-entry) of his successor, the lands shall not be deemed to be in non-entry. The necessary consequence of this provision is to render incompetent the action of declarator of non-entry which was previously in use for the purpose of enforcing an entry and thus securing a casualty, and under which the superior could obtain a decree authorizing him to enter into possession of the lands and appropriate the rents while the vassal lay out unentered. But in order to preserve unimpaired the pecuniary rights and interests of superiors, a new form of action, directed against the actual proprietor of the lands, is introduced, the effect of which is nearly equivalent to that of the former action of declarator.

One result of the abolition of the casualty of non-entry is that a superior can no longer enforce the conditions of a feu-right by means of an action of reduction-improbation and declarator of non-entry, a remedy which sprang from the superior's right to refuse an entry to the heirs or singular successors of a vassal who had contravened the conditions of his feu.

(*b*) As to what is included by the word "lands," see note (*b*) to sub-section 1, *ante*, p. 304.

(*c*) Viz., 1st October 1874.

(*d*) This clause abolishes a fundamental principle of the feudal system, viz., that every superior is entitled to have a vassal entered in the feu; see Bell's Lectures on Conveyancing, 1st ed., p. 582, 2d ed., p. 615.

Under the previous system, where lands which were in non-entry were sold without the purchaser being expressly taken bound to accept the seller's title as it stood, the seller was bound to enter with the superior, and to pay whatever casualty was exigible in respect of his entry; see Bell's Lectures, 1st ed., pp. 644 and 672. Under the present system the purchaser appears entitled, before accepting the disposition, to insist on the seller paying any casualty due in respect of the death of the last entered vassal or of the last proprietor who has paid a casualty; but if he accepts a disposition in the usual terms he will apparently lose this right. Thus, in the case of *the Leith Heritages Co. v. the Edinburgh and Leith Glass*

Co., 8th June 1876, 13 Scot. Law Rep., 731, it was held by the Lord Ordinary (Curriehill), whose judgment was acquiesced in, that a clause in a disposition binding the seller to relieve the purchaser of all feu-duties, casualties, and burdens due and payable at and preceding the term of entry, did not entitle the purchaser to relief against the seller for a composition demanded by the superior from the purchaser, although it might have been demanded from the seller prior to the date of the sale. The *ratio* of this judgment was that a proprietor is not bound under the present system, any more than under the previous system, to pay a casualty until the superior demands it, and that if the superior abstains from demanding it the casualty is thus not "due and payable" by the proprietor although infest, and so constructively entered. It must, however, be observed that this *ratio* is applicable only to the *legal* casualties, not to periodical fixed sums stipulated for in terms of section 23 of the Act, nor to stipulated compositions made real burdens, and payable on each transfer as well as on the occasion of the death of each vassal, as to which see notes (e) and (k) to sub-section 3, *ante*, p. 315 and 317.

(e) Including the Crown and Prince, all subject-superiors and mid-superiors; see interpretation clause (section 3, paragraph 3), *ante*, p. 302.

(f) Under the previous system a superior was not entitled to sue an action of declarator of non-entry unless his own title was completed; see Bell's Lectures on Conveyancing, 1st ed., p. 1051. Before raising an action in the new form here authorised, a superior therefore must complete his title; but his title will be sufficiently completed, under the preceding provisions of this section, by his taking infestment, even although he may not have paid to the over-superior a casualty exigible in respect of the death of the last entered proprietor of the superiority.

In the next place, a superior was not entitled, under the previous system, to sue an action of declarator of non-entry if the fee was full—that is to say, if the last entered vassal was still alive; and therefore a superior is not now entitled to raise action in the new form for a legal casualty during the lifetime of the person last actually entered under the old system, or during the lifetime of the person who under the new system has been last recognised by the superior's taking from him payment of a casualty.

Even where the fee was not full, the superior's right to raise action was excluded under the previous system if there was a life-renter possessing under a grant from the superior, or if there was a widow possessing in virtue of his courtesy, or (to the extent of one-third) if there was a widow possessing in virtue of her terce; see note (i) to sub-section 3, *ante*, p. 316. Under the new system the superior's right is similarly excluded in each of these cases.

Lastly, a superior could not raise an action of declarator of non-entry against an heir within year and day of his ancestor's death,

Page 319, end of note (d).

It has now been authoritatively settled by the Judges of the Second Division along with four consulted Judges that the opinion of Lord Curriehill here referred to was erroneous, and that where a disposition contains the usual clause of relief, the seller is bound to relieve the purchaser of any casualty which the superior was entitled to demand prior to the date of the purchaser's entry into possession — *Straiton Estate Co. v. Stephens*, Dec. 16, 1880, 8 R. 299.

unless the heir had already incurred a passive representation, and a superior's rights appear to be similarly limited under the new system; see note (i), *ante*, p. 316-7.

Page 320, end of note (f).

The representative of the superior who has granted the last entry will be presumed to be the superior, unless the defender can shew that the superiority belongs to someone else. — *E. of Breadalbane v. Macdougall*, 4th Nov. 1880, 8 R. 42.

(g) The word conveyance includes almost every kind of writings; see interpretation clause (section 3, paragraph 4), *ante*, p. 302.

(h) The action is to be brought against the person or persons actually in right of the lands, whether such person or persons are infeft or not. Tenants or sub-vassals do not require to be called for their interests.

(i) Under the interpretation clause (section 3, paragraph 7), *ante*, p. 302, "casualties" include the relief duty payable on the entry or succession of an heir, the composition or other duty payable on the entry of a singular successor, whether by law or under the conditions of the feu, and all payments exigible in lieu of such duties and compositions, and all periodical fixed sums and quantities which may be stipulated for under the Act (section 23). But there is some doubt whether all such casualties can be recovered by the form of action here introduced. The new action can be raised only by "a superior who would but for this Act be entitled to sue an action of declarator of non-entry against the successor of the vassal in the lands;" and the question thus arises whether the new form of action can be used for the recovery of all the kinds of casualties enumerated in the interpretation clause, or merely for the recovery of such as might under the former system have been made effectual by a declarator of non-entry, viz., the casualties of relief-duty and composition which become due in consequence of the death of the last vassal. It is thought that the latter is the correct view, although some of the directions contained in the schedule are suggestive of a contrary intention; see notes (c) and (f) *infra*, pp. 318, 319.

Fixed sums payable at fixed periods, whether stipulated for before the commencement of the Act or thereafter under section 23, are of the nature of feu-duties, and may, it is thought, be made effectual in the same way. The mode of enforcing payment of other casualties, such as casualties payable on the occasion of each sale or transfer of the property, must depend to a large extent on the terms of the feu-right; see note (e) to sub-section 3, *ante*, p. 315.

(k) Only one casualty can be exigible at the date of the action, although several implied entries may have taken place after the date at which the superior might have demanded payment. It is left optional to the superior not to demand the casualty and raise action therefor, in the same way as it was optional to him under the previous system to allow the successor to the last entered vassal to lie out unentered, without raising a declarator of non-entry. The defender is bound to pay the casualty, in respect that he is the proprietor, and that but for that Act the lands would be in non-entry. On paying the casualty he is in the same position as if he had paid

it under the former system, though he does not now require to take a charter by progress; and accordingly his life regulates the payment of the next casualty. See opinion of Lord Curriehill in *The Leith Heritages Co. v. the Edinburgh and Leith Glass Co.*, 8th June 1876, 13 Scot. Law Rep. 731.

(l) That is to say, the defender cannot avoid payment on the plea that entry implies a discharge of all casualties. The implied entry referred to may be either that of the defender himself or of a previous proprietor still in life, who has not paid a casualty.

(m) A decree of declarator of non-entry empowered the superior to take possession of the lands to the exclusion of all others, whether tenants, sub-vassals, or creditors with completed rights; and this possession could be terminated only by the heir or disponee entitled to the lands coming forward and obtaining an entry. See Bell's *Lectures on Conveyancing*, 1st ed., p. 582, 2d ed., p. 616; *Juridical Styles*, 2d ed., vol. iii., p. 186.

At strict law the superior was entitled to the full rents from the date of citation; but any reasonable grounds for delay in taking an entry were in practice held sufficient to exclude this extreme claim; *Robin v. Drummond*, 13th June 1823, 2 S. 404 (N.E. 359); *Tod's Trustees v. Graham*, 9th Dec. 1869, 8 Macph. 264. The new form of summons given in Schedule B. contains a conclusion that the full rents after citation belong to the pursuer; but it is plainly as much as formerly within the discretion of the Court to modify this claim, as was done in the case of *Ferrier's Trustees v. Bayley*, 26th May 1877, 4 Rettie 738, where the rents were awarded from the date of the Lord Ordinary's interlocutor disposing of the merits of the case.

The new form of summons contains a conclusion that the defender should be decerned to make payment to the pursuer of the amount of the casualty and expenses; but as a decree of declarator of non-entry had not the effect of rendering the defender personally liable for payment of the casualty and expenses, a decree in terms of the conclusions of the new form of summons will not render the defender so liable. The rights of the superior are fully protected by his power to enter into possession and appropriate the rents.

(n) That is to say, on payment being made otherwise than by the rents already drawn and appropriated by the superior, the defender is reinstated in his full proprietorial rights.

(o) That is to say, the superior is not bound to account for the rents uplifted or intromitted with by him in virtue of the decree.

(p) There must be no actual deviation from the form here prescribed.

Page 321, end of note (k).

This part of Lord Curriehill's opinion does not seem affected by the judgment of the Inner House in *Straiton Estate Co. v. Stephens*, Dec. 16, 1880, 8 R. 299. As regards the particular year the rental of which falls to be taken as the criterion of the composition due to the superior, having regard to the opinions expressed in the above case to the effect that a casualty now becomes due and exigible at the date of the death of the last entered vassal, irrespective of any demand by the superior, it has been held by Lord Curriehill, in whose judgment the parties acquiesced, that the rent of the feu as at the date of the death of the last entered vassal, and not as at the date of the action of declarator and payment, is the measure of the composition due by a vassal entered in virtue of the implied entry provided by this section of the Conveyancing Act.—*Stuart v. Murdoch & Rodger*, June 6, 1887, 19 Scot. Law Rep. 649.

In a prior case, where the vassal last entered by the superior had died in the year 1872, the Second Division took the average of the three years ending Whitsunday 1874; but this was a case of mineral rents.—*Sivright v. Straiton Estate Co.*, 8th July 1879, 6 R. 1208.

SCHEDULE B.

FORM OF SUMMONS OF DECLARATOR AND FOR PAYMENT OF A CASUALTY (a).

Victoria, &c. Whereas it is humbly meant and shown to us by our lovite *A.* [*design him*], immediate lawful superior of the lands [*or subjects*] after described [*or referred to*], and duly infest therein conform to [*here mention title and date of recording same in the register of sasines*], pursuer, against *B.* [*design him*], defender, in terms of the condescendence and note of pleas in law hereunto annexed: Therefore it ought and should be found and declared by decree of the Lords of our Council and Session, that in consequence of the death of *C.* [*or otherwise as the case may be*] (*b*), who was the vassal last vest and seised (*c*) in all and whole the lands of *X.* [*describe or refer to (d) the lands, and if the casualty due is a taxed composition, or an heir's relief duty, say*] the casualty of £ [*or, if a singular successor's untaxed composition be due, say*] a casualty, being one year's rent (*e*) of the lands, became due to the said *A.* as superior of the said lands upon the day of , being the date of the death of the said *C.* [*or*] the date of the infestment of the said *B.* in the said lands of *X.* (*f*) [*or otherwise as the case may be*] (*b*), and that the said casualty is still unpaid, and that the full rents, maills, and duties of the said lands of *X.*, after the date of citation herein, do belong to the pursuer the said *A.*, as superior thereof, until the said casualty and the expenses after mentioned be otherwise paid to the said *A.*: And the said *B.* ought and should be decerned and ordained by decree foresaid forthwith to make payment to the pursuer the said *A.* of the said sum of £ , being the casualty foresaid, [*or of the sum of £ , or such other sum more or less (e) as shall be ascertained in the course of the process to follow hereon to be one year's rent of the said lands*], together with the sum of £ , or such other

sum more or less as our said Lords shall modify as the expenses of the process to follow hereon, conform to the laws and daily practice of Scotland, used and observed in the like cases as is alleged. Our will is herefore, &c.

NOTE.—In the event of the summons being one at the instance of the Crown or Prince and Steward of Scotland, the necessary alteration will be made, and the summons will be at the instance of the Lord Advocate on behalf of the Commissioners of Her Majesty's Woods and Forests.

(a) As to the circumstances in which this action is competent, and the effect of decree, see notes to the immediately preceding sub-section.

Under section 66 the directions contained in this schedule and the note thereto appended have the same effect as if they were contained in the body of the Act.

(b) The meaning of this direction is doubtful. If the view taken in note (i), *ante*, p. 320, is correct, the casualty can have become due only in consequence of the death of some individual, though that individual may be either the vassal last actually entered, or the vassal constructively entered, who has paid the last casualty, or a liferenter possessing under a grant from the superior or in virtue of the legal liferent of courtesy or terce; see note (f) *ante*, p. 319.

(c) These words are inappropriate to the case of a casualty having become due in consequence of the death of the person who paid the last casualty, if a subsequent proprietor has obtained an implied entry.

(d) That is to say, refer to the lands in the mode prescribed by section 61 of the present Act.

(e) Certain deductions are allowed from the year's rent; see notes to section 15. But they do not require to be specified or referred to in the summons.

(f) These words suggest a view different from that taken in note (i) *ante*, p. 320. A casualty that became due on the defender's infetment, though the last entered vassal was then in life, could not have been made effectual, under the former system, by a declarator of non-entry.

5. *Compositions payable by corporations or trustees or persons having separate interests (a).*—Unless where it has been or shall be otherwise stipulated (*b*), corporations shall pay at the date at which the first composition would have been payable if this Act had not been passed (*c*), and every twenty-fifth year thereafter, a sum equal to what, but for the passing of this Act, would have been payable on entry by a singular successor (*d*); and where a composition payable on the death of the vassal shall become exigible from any trustee or body of trustees, another composition shall be payable at the end of every twenty-five years, so long as the lands (*e*) shall be vested in such trustee or trustees; and where, by the terms of the feu rights of the lands a taxed (*f*) composition is payable on the occasion of each sale or transfer of the property, as well as on the occasion of the death of each vassal (*g*), and a composition shall in consequence of the acquisition of the property become exigible from any corporation or from any trustee or body of trustees, another composition, unless where it has been or shall be otherwise stipulated (*b*), shall be payable at the end of every fifteen years from the date of such acquisition by such corporation or trustee or trustees, so long as the lands (*e*) shall be vested in such corporation or trustee or trustees, with such interest, if any, as may be stipulated for in the feu rights during the not-payment of casualties (*h*); provided always, that in the event of such corporation or of such trustee or trustees ceasing to be proprietors of the lands (*e*) after having paid a composition or compositions in terms of this section (*i*) the successor of such corporation or of such trustee or trustees who shall be duly infeft (*k*) in the lands (*e*) at the expiration of twenty-five years where a composition is payable on the death of the vassal, or at the expiration of fifteen years where a composition is payable on the occasion of each sale or transfer as well as on the occasion of each death, from the date of the last payment of composition as aforesaid, shall then pay a composition, and the casualties for and in respect

of such lands shall thereafter become due and payable at the same time and in the same manner as if such lands had never been vested in such corporation or in such trustee or trustees; and where, by the terms of the feu rights of the lands a taxed composition is payable on the occasion of each sale or transfer of the property as well as on the occasion of the death of each vassal (*l*), and where an entry is implied in terms of this Act in favour of two or more parties having separate interests as life-renter and fiar respectively or as successive life-renters, a composition, or in the case of parties interested pro indiviso (*m*) a rateable share of a composition, shall be due by and exigible from each of the parties who shall take or derive benefit under the implied entry in the order in which they shall severally take or derive benefit under such implied entry, with such interest, if any, as may be stipulated for in the feu right during the not payment of casualties (*l*).

(*a*) The object of this section is to regulate the periods at which, unless otherwise stipulated, casualties of composition shall be payable by corporations, bodies of trustees, or persons with separate interests, who have acquired right to lands feued before the commencement of the Act. According to the former law, a superior was not bound to enter a corporation, as his doing so would have deprived him of any casualties during the period that the corporation held the lands; nor was he bound to grant an entry to a body of trustees and the survivor of them, as his doing so would have delayed the payment of the next casualty. In such cases it was usually arranged by the parties that the superior should enter the corporation or body of trustees, on the condition that the next casualty should be payable on the death of some one individual, or on the expiry of a fixed number of years. By section 113 of the Consolidation Act, *ante*, p. 218, provision was made for the payment of casualties in the case of lands held by trustees for religious or educational purposes; but the present Act, by making infeftment in all cases equivalent to entry, rendered necessary a general provision regulating the periods at which corporations and bodies of trustees should pay the casualties of composition. The present section accordingly fixes twenty-five years as the period at the expiry of which a new composition shall be exigible, unless the feu-right provides for the payment of a taxed composition on every transfer as well as on the death of each vassal, in which case the period is fifteen years. The section further provides for the case of two or more persons having separate interests, as life-

renters and fiars, or successive liferenters, in all cases where by the terms of the feu right a taxed composition is payable on each transfer as well as on the death of each vassal, the transmissions to and from such persons being regarded as transfers.

This section is applicable only to feus granted prior to the commencement of the Act, as section 23 provides that in feus granted thereafter no casualties shall be payable irrespective of express covenant, and that it shall not be lawful to stipulate for casualties except in the form of fixed sums at fixed intervals.

(b) These introductory words apply not merely to the immediately succeeding clause with reference to compositions payable by corporations, but also to the subsequent clause with reference to compositions exigible from trustees.

Under the former system stipulations as to the entry of corporations and trustees were generally introduced into charters or writs by progress. Under the present system such stipulations (if not contained in the original charter) may be inserted in either a charter of novodamus or a deed of agreement recorded in the register of sasines.

(c) That is to say, in the ordinary case, on the death of the last entered vassal.

Page 326, end of note (c).

Where subjects formerly held by magistrates, kirk-sessions, &c., for behoof of the poor, have been conveyed in terms of the Poor Law Amendment Act of 1845 to a parochial board, such parochial board is regarded as a singular successor, and is consequently bound to pay composition.—*Crawford v. Dempster*, 26th Feb. 1879, 6 R. 708.

(d) That is to say, the casualty of composition, taxed or untaxed, as the case may be, according to the terms of the feu-right.

(e) Including here all subjects of heritable property held of a superior according to feudal tenure; see interpretation clause (section 3, paragraph 1), *ante*, p. 301.

(f) This clause is restricted to the case of the composition being taxed, so that where by the terms of the feu-right an untaxed composition is payable on the occasion of each sale or transfer, it is due from corporations or trustees only every twenty-fifth year.

(g) That is to say, the death of each vassal who has not so sold or transferred the property.

(h) Interest is not due unless expressly stipulated for.

(i) If the corporation or trustees cease to be proprietors without having been required to pay a composition, the right of the superior to casualties has not been affected by the fact that a corporation or a body of trustees have been entered vassals; and therefore the provisions of this section are not made applicable to such a case.

(k) As it is only the successor duly infeft who is here made liable in payment of the casualty, the superior seems to have no claim against

the successor in the event of the latter not having taken infestment. But as the compositions are to be payable by the corporation or trustees so long as the lands shall be vested in such corporation or trustees, and as section 4, sub-section 2, provides that the last entered proprietor shall continue personally liable to the superior for performance of the whole obligation of the feu until notice of the change of ownership following upon the successor's infestment, the superior may, it is thought, raise an ordinary action against the corporation or trustees, concluding for payment of the outstanding composition. The form of summons contained in Schedule B. does not seem competent.

(l) It is to be observed that this provision is not applicable to the usual case of a casualty becoming due merely on the occasion of the death of each vassal, nor to any case where the composition is untaxed. To such cases the common law rule is applicable that the death of the fiar, not the death of the liferenter, determines the date at which the casualty becomes payable, though in the instances mentioned in note (i), *ante*, p. 316, the payment is postponed till the death of the liferenter.

(m) *Pro indiviso* shares of lands constitute separate feudal estates, so that the fee of one may be full while the fee of the other is not so; *Cauvin's Hospital v. Falconer*, 18th July 1863, 1 Macph. 1164.

6. *Consolidation of superiority with property (a).*—When a superior (b) has acquired and completed or shall acquire and complete a title by infestment (c) to the property or mid-superiority of lands (d), or where the proprietor of the property or of the mid-superiority has acquired and completed or shall acquire and complete a title by infestment (c) to the superiority, a minute in the form or as nearly as may be (e) in the form of Schedule C. hereto annexed, shall, when recorded in the appropriate register of sasines, be held to consolidate the property or the mid-superiority, as the case may be, with the superiority, all to the same effect as consolidation effected by resignation *ad perpetuam remanentiam* duly completed according to the present law and practice (f).

(a) The object of this section is to provide a short and simple mode of consolidating or re-uniting separate estates of superiority and property vested in the same person.

Under the previous system consolidation was effected by means of resignation *ad remanentiam*, the competency of which, however, is now very doubtful; see note (a) to section 18 of the Consolidation Act, *ante*, p. 58.

(b) Including the Crown, the Prince, all subject superiors, and mid-superiors; see interpretation clause (section 3, paragraph 3), *ante*, p. 302.

(c) Including every title to an estate in land requiring and admitting of infeftment which is duly recorded in the appropriate register of sasines; see interpretation clause (section 3, paragraph 5), *ante*, p. 302. Both the title to the superiority and the title to the property must have been completed by infeftment.

(d) Including here all subjects of heritable property held of a superior; see interpretation clause (section 3, paragraph 1), *ante*, p. 301.

(e) There must be no actual deviation from the form here prescribed.

(f) As to the effect of consolidation, see Bell's Lectures on Conveyancing, 1st ed., p. 718 *et seq.*, 2d ed., p. 767 *et seq.*; and the recent cases of *Park's Curator v. Black*, 8th March 1870, 8 Macph. 671, and *Earl of Zetland v. Glover Incorporation of Perth*, 11th July 1870, 8 Macph. (H. L.) 144.

SCHEDULE C.

FORM OF MINUTE FOR EFFECTING CONSOLIDATION OF LANDS (a).

I, *A.B.*, heritable proprietor both of the immediate superiority and of the property [*or* of the mid-superiority] of all and whole [*describe or refer to (b) the lands*], hereby consolidate the property of the said lands [*or* the mid-superiority of the said lands] with the immediate superiority thereof. In witness whereof [*testing clause*] (c).

(a) The stamp duty is 10s.

(b) As to the mode in which the lands may be referred to, see section 61 of this Act.

(c) It is recommended that the testing clause be in the usual form, although there is no doubt that the provisions of sections 38

and 39, relaxing the formalities required in the execution of deeds, are applicable to all the deeds contained in the schedules.

Before being presented for registration in the appropriate register of sasines, the minute must have endorsed thereon a warrant of registration; see section 33 of this Act.

7. Consolidation not to affect or extend superior's right (a).—No consolidation that may be effected under this Act or otherwise (b) shall in any way affect or extend the rights or interests of any over superior, or entitle him to any more than the duties or casualties to which he would have been entitled had there been no consolidation.

(a) The object of this section is to prevent consolidation having the effect of extending the rights of the over-superior as regards casualties. If A., the over-superior, feued the lands to B., with the casualties untaxed, and B. thereafter feued them to C., the composition payable to A. would be no more than the feu-duty payable by C. to B.; but if C.'s estate of property was consolidated with B.'s estate of mid-superiority, the composition would, but for the provisions of this section, have been a full year's rent of the lands.

As the section is not retrospective in its operation, it does not affect consolidations effected prior to 1st October 1874.

(b) The words "or otherwise" appear to refer to the case of consolidation being effected by the operation of prescription; see Bell's Lectures, 1st ed., p. 730, 2d ed., p. 780. They would also cover the case of consolidation by resignation *ad remanentiam* if still competent; see note (a) to section 18 of the Consolidation Act, *ante*, p. 58.

8. Memorandum of allocation of feu-duty (a).—Where a proprietor desires to obtain the benefit of any provision (b) as to allocation of feu-duty (c), or where the superior (d) agrees to an allocation of the feu-duty (c) contained in the original grant with or without augmentation (e), such proprietor may, either before or after the deed in his favour is recorded in the appropriate register of sasines, obtain a memorandum indorsed thereon in or as nearly as may be (f) in the form of Schedule D. hereto annexed, and the allocation contained in such memorandum shall be binding

on all having interest (*g*): Provided always, that such allocation shall not prejudice or affect the rights of heritable creditors (*h*) who are not parties thereto.

(*a*) The object of this section is to provide a simple and inexpensive mode by which a *cumulo* feu-duty may be allocated or apportioned among the parts into which the feu may have been subdivided. It is a principle of feudal law that unless a superior has expressly allocated the feu-duties and casualties payable to him in respect of a feu right, and restricted to a definite sum or share the amount payable by persons acquiring right to parts of the original feu, each particle of the ground is liable to the superior for the whole feu-duties and casualties, the vassals being left to operate their own relief *inter se*; see Duff's Feudal Conveyancing, p. 80; Bell's Prin., sec. 697; and *Nisbet v. Smith*, 6th June 1876, 3 Rettie 781. The present Act leaves this principle intact; but it simplifies the mode by which, where the superior has consented to an allocation, such allocation may be effected. Under the previous system the allocation was generally introduced into the reddendo of a charter or writ by progress; and it may still be introduced into that of a charter of novodamus or precept or writ of *clare constat*. The memorandum of allocation provided by the present section is, however, to be preferred in the ordinary case.

(*b*) Contained in the original grant, or in a competent charter by progress.

(*c*) Under the interpretation clause (section 3, paragraph 6), *ante*, p. 302, the words "feu-duty" are not declared to include casualties of any kind; but Schedule D. has been framed so as to include any stipulated augmentations of the feu-duty, that is to say, such sums as may be stipulated for under section 23 of the Act. Where it is desired to allocate casualties properly so called, that is to say, sums payable on the occasion of the death of the last vassal under feu rights granted prior to the commencement of the Act, the allocation should be effected by means of a charter of novodamus, seeing that it is very doubtful whether the present section and schedule contemplate such a case.

(*d*) Including the Crown, the Prince, all subject superiors, and mid-superiors; see interpretation clause (section 3, paragraph 3), *ante*, p. 302.

(*e*) That is to say, with or without such an augmentation as may be stipulated for under section 23.

(*f*) There must be no actual deviation from the form here prescribed.

(*g*) That is to say, not merely on the superior and his successors,

Page 330, addition to notes (*c*) and (*e*).

The augmentations referred to may also be such as a superior may stipulate for as the condition upon which he grants his consent to an allocation.

but also on the proprietors of the other parts of the original feu. The form of memorandum given in the schedule does not expressly discharge the lands of the remainder of the *cumulo* feu-duty; but this is obviously intended to be implied by the allocation. The memorandum should be recorded in the register of sasines.

(h) That is to say, the superior's heritable creditors whose rights have been completed by infeftment prior to the date of the memorandum of allocation.

SCHEDULE D.

FORM OF MEMORANDUM OF ALLOCATION OF FEU-DUTY (a).

The proportion of the original feu-duty of £ allocated upon the lands within disposed [*or as the case may be*], is hereby fixed at £ [and if an augmentation has been stipulated for (b), add] with £ of augmentation, making a total of £ .

(Signed) A.B. (*the superior of the lands
or his commissioner*) (c).

(a) The stamp duty is 10s. The memorandum does not require to be either holograph or attested.

(b) See note (c) *ante*, p. 330.

(c) In order to bind the superior, his commissioner must be specially authorized to allocate the feu-duty; and a formal deed of factory containing such authority seems necessary.

9. *Estates (a) to vest in heirs without service (b).—* A personal right to every estate in land (c) descendible to heirs shall, without service or other procedure (d), vest or be held to have vested in the heir entitled to succeed thereto, by his survivance of the person to whom he is entitled to succeed (e), whether such person shall have died before or after the commencement of this Act, provided the heir shall be alive at the date of the commencement of this Act (f), if such person

shall have died before that date (*g*), and such personal right shall, subject to the provisions of this Act (*h*), be of the like nature and be attended with the like consequences, and be transmissible in the same manner as a personal right to land under an unfeudalised conveyance, according to the existing law and practice (*i*).

(*a*) In place of "estates" read "personal rights to estates."

(*b*) The object of this important section is to assimilate the law relating to heritable succession to that relating to moveable succession as far as regards the acquisition of a vested or transmissible right thereto. It was felt to be a grievance that although, on the death of any person, his intestate moveable succession at once devolved upon his next of kin, so as to be transmissible and at their disposal, the heir acquired no vested or transmissible right to the heritable estate (with a few exceptions, of which the most important was leasehold property) unless and until he had completed a formal title thereto. The present section removes this anomaly, by providing that a personal right shall vest in the heir entitled to succeed by his mere survivance of the person to whom he is entitled to succeed, to the same effect as if he had obtained from the defunct a conveyance not followed by infeftment. In virtue of this personal right, the heir may possess, transmit, alienate, or affect with debt the estate to which he has succeeded; but neither such heir nor his disponees can complete a feudal title by infeftment without service, or (in the case of the heir himself), writ or precept of *clare constat*. Service, however, is no longer required for any purpose in the case of such heritable rights as do not admit of infeftment.

(*c*) Under the interpretation clause (section 3, paragraph 2), *ante*, p. 301, the words "estate in land" here mean any interest in land, whether in fee or in security, and whether beneficial or in trust, or any real burden on land, and include an estate of superiority. The addition of the words "descendible to heirs" excludes the case of the heir of a sole or last surviving trustee under section 43.

(*d*) Service or other procedure is here dispensed with only in so far as regards the vesting in the heir of a *personal right* to the estate in land; see section 10.

(*e*) The heir may be entitled to succeed either as heir-at-law or as heir of provision.

(*f*) Viz., from and after 1st October 1874.

(g) If the heir was alive at the date of the commencement of the Act, the personal right is deemed to have vested in him at that date, though the person to whom he is entitled to succeed may have died long before that date.

(h) Viz., in sections 10, 11, 12, and 13. The Act does not supply a title equivalent to an unfeudalised conveyance, to the effect of enabling the heir to expedite a notarial instrument.

(i) The heir is thus enabled immediately on his ancestor's death to dispose of the estate either onerously or gratuitously by deeds either *inter vivos* or *mortis causa*; and his creditors can attach it either during his life or after his death, the Act 1695, c. 24, as to apparent heirs in possession for three years, being superseded by the ampler provisions of this section. But the Act 1661, c. 24, which accords a preference to the ancestor's creditors, is not affected by these provisions.

It is still desirable for many reasons that an heir should complete a title to the lands, and so make his right thereto a real right, without delay. A person taking a conveyance from an heir who has not completed a title is exposed to risk as long as he does not make his right real, for till then the heir is not divested of his personal right; see Bell's Lectures, 1st ed., p. 715; 2d ed., p. 764.

10. *Completion of title when deceased heir not served.*—*Petition to be proceeded with as if it were a petition for special service* (a).—A title of an heir to, or donee of, a proprietor of any lands (b) who was neither infeft nor served (c), but vested only with a personal right to such lands, by virtue of this Act (d), or of any person acquiring right (e) from such heir or donee, may be made up in like manner as if the person making up a title had held a disposition from the proprietor last infeft in the lands in favour of his immediate successor therein, and a disposition and assignation from each heir or donee, if any, intervening between such immediate successor and the person so making up a title in favour of his immediate successor therein (f); and such title may be made up in manner following, viz.:

The heir or donee or other successor making up such title shall present to the Sheriff of Chancery, or to the Sheriff of the county where the lands are situated (g), a petition which may embrace several

Page 333, end of note (2).

Possession on appearance is no longer known to the law of Scotland; and one result of this is that an heir succeeding to an entailed estate no longer requires to make up his title or to possess on appearance for three years, before becoming entitled to grant bonds of provision under the Aberdeen Act. — *M'Adam v. M'Adam*, 15th July 1879, 6 R. 1256. Questions may, however, arise under the Act 1695, c. 24, where the heir-apparent has died prior to 1st Oct. 1874. — *Fleming's Trs. v. Fleming's Tutors*, June 30, 1882, 9 R. 1013.

separate lands or estates (*l*), and may be in the form of Schedule E. hereto annexed, or as nearly in that form as the circumstances in each particular case will permit, setting forth the name of the proprietor last infest (*h*), a description of the lands, or a valid reference thereto (*i*), and the names (*k*) and, so far as known, the designations of every proprietor having only a personal right therein, whether by succession, bequest, gift, or conveyance, who has intervened between the proprietor last infest and the petitioner, and also setting forth the petitioner's own right to the said lands; and on the decree pronounced on said petition finding the facts therein set forth proved, and that the petitioner is entitled to be infest in the said lands, being extracted in one or several extracts (*l*), and on such extract decree or decrees, as the case may be, being recorded (*m*) in the appropriate register of sasines, the petitioner shall be held to be duly infest in the said lands contained in the extract or extracts so recorded.

Such petition shall be presented, published, and carried through in all respects as if the same were a petition for special service under the now existing law (*n*); and the extract decree or decrees on such petition, as the case may be, shall be equivalent to a decree of special service (*o*), and when duly recorded as aforesaid in the appropriate register of sasines shall have the same effect as regards the lands therein contained as an extract decree of special service duly recorded under the now existing law (*p*).

(*a*) The object of this section is to provide a mode of completing a title to lands where a proprietor or proprietors with only a personal right under the preceding section have intervened between the proprietor last infest and the person who desires to complete the title. Such person, whether an heir or a donee, is empowered to present a petition to the Sheriff of Chancery or the Sheriff of the county in which the lands lie, and the decree on the petition is made equivalent to a decree of special service. These provisions were necessitated by the peculiar position in which a person is placed who derives right from an heir with a mere personal right to lands, the previously existing forms of service being appropriate only to the case of the petitioner being the direct,

though, it might be, not the immediate, heir of the proprietor last infeft.

This mode of completing a title is appropriate only to the case of there having been an intervening proprietor or proprietors with a personal right under the preceding section. By section 31 of this Act a higher right is conferred upon an heir who has obtained a decree of general service; and in completing a title recourse should be had to the provisions of that section, if each heir in the series of proprietors has expedited a general service to his immediate ancestor. Under section 46 of the Consolidation Act, where an heir has obtained a decree of special service, but has not taken infeftment thereon, he or his successors or his assignees may complete a title in the same way as if the extracted decree had been an unrecorded conveyance; and hence the heir of such heir should make up his title by a general service.

As the provisions of this section in regard to the completion of titles are not imperative, but only permissive, they do not abrogate any previously appropriate mode of completing a title. Hence, if the person who desires to complete his title has come to be the direct heir of the proprietor last infeft, although there were intervening heirs with personal rights to the lands, he may still complete his title by passing over the intervening heirs and serving himself heir to the proprietor last infeft, provided no mid-impediment has been created by an intervening service or a conveyance by any intervening heir; see Mowbray's Hendry's Styles, new edition, p. 160. Of course this mode of completing a title will not prevent the estate being liable for the debts and deeds of the intervening heirs.

(b) Under the interpretation clause (section 3, paragraph 1), *ante*, p. 301, "lands" include all subjects of heritable property which are or may be held of a superior according to feudal tenure, or which prior to the commencement of the Act have been or might have been held by burgage tenure, or by tenure of booking.

(c) As to the mode of completing a title where the proprietor, though not infeft, has been served, see note (a) *supra*.

(d) Viz., under section 9, *ante*, p. 331.

(e) Viz., as heir or disponee, or by judicial transmission.

(f) That is to say, as if a personal right constituted by an unfeudalized conveyance had been duly transferred from proprietor to proprietor, and ultimately to the person making up a title. It is, however, only by means of the following clause that this legal theory or fiction receives such effect as renders possible the completion of a feudal title.

(g) As to the jurisdictions of the Sheriff of Chancery, and the Sheriffs of counties, see *ante*, p. 91. The word Sheriff includes

Steward, Sheriff Substitute, and Steward Substitute; see interpretation clause (section 3, paragraph 8), *ante*, p. 302.

(*h*) In every case the petition must start from the proprietor last infeft, though such proprietor may be in life when the service is expedite.

(*i*) As to the mode in which the reference should be made, see section 61 of this Act.

(*l*) It seems essential to the validity of the decree that the name of every intervening proprietor with a personal right should be set forth in the petition.

(*l*) Separate extract decrees may be obtained under section 36 of the Consolidation Act, *ante*, p. 112, where the petition embraces several separate lands or estates, provided a prayer to that effect is inserted in the petition.

(*m*) With warrant of registration thereon; see section 33.

(*n*) As to the mode of presenting, publishing, and carrying through a petition for special service, see sections 28 to 33, and 35 to 45 of the Consolidation Act, *ante*, pp. 91 to 110, and 111 to 124.

(*o*) As to the effect of a decree of special service, see sections 46 and 47 of the Consolidation Act, *ante*, p. 124 *et seq.*

(*p*) That is to say, shall have the effect of a conveyance followed by infeftment.

SCHEDULE E.

FORM OF PETITION FOR COMPLETING A TITLE TO LANDS
WHERE A PROPRIETOR OR PROPRIETORS HAVING ONLY
A PERSONAL RIGHT HAVE INTERVENED BETWEEN THE
PROPRIETOR LAST INFECT AND THE PETITIONER.

Unto the Honourable the Sheriff of [*specify the county, or say "of Chancery"*] (*a*),
The Petition of *A.B.* of *G.*

Humbly sheweth,

That the late *C.D.* of *G.* died last vest and seised (*b*) in all and whole [*describe or refer to (c) the*

lands as the same are described or referred to in the recorded deed or instrument in favour of the person who was last vest and seised in the lands, or refer to (c) them as described in some other recorded deed or instrument] conform to instrument of sasine [or other recorded deed or instrument, as the case may be], recorded (d) in the [specify the register of sasines and date of recording, and where there are any real burdens, conditions, or qualifications, here specify or refer to (e) them, or where the lands are held under entail, here specify the conditions of the entail, or refer to (f) them as contained in the entail, as recorded in the register of tailzies, or if it is not so recorded, in the entail or other deed or instrument recorded in the register of sasines].

Or that *M.N.* of *Y.* was last vest and seised (b) in all and whole [describe or refer and specify title and date of recording, &c. as above]. That the said *M.N.* by disposition dated [specify date] conveyed the said lands to *C.D.* of *G.* That the said *C.D.* died never having been infeft in the said lands.

That *E.F.*, eldest son of the said *C.D.* [or otherwise, as the case may be], is his heir in the said lands, but has only a personal right thereto.

That the said *E.F.*, by disposition dated [specify date], conveyed the said lands to the petitioner.

Or, that upon the death of the said *C.D.*, he was succeeded by *E.F.*, his eldest son [or otherwise, as the case may be], as his heir in the said lands. That the said *E.F.* died unserved and uninfeft, [or that the said *E.F.* expedie a special service as heir of the said *C.D.*, conform to decree of the Sheriff of Chancery [or, as the case may be], in his favour as heir foresaid, dated [insert date], but died without being infeft thereon, [or that the said *E.F.* expedie a general service as heir of the said *C.D.*, conform to decree [specify the decree], but made up no further title (g).

Or otherwise specify the nature of the right in the person of *E.F.*

That the said *E.F.* disposed the said lands, or conveyed his whole estate, heritable and moveable, to

G.H. conform to [describe title by name and date, and where there are any real burdens, conditions, or qualifications, specify or refer to them].

That the said *G.H.* also died, having only a personal right to the said lands, and was succeeded by his eldest son, *K.L.*, his nearest and lawful heir in the said lands [or otherwise, as the case may be].

That the said *K.L.* died unserved, and having only a personal right to the said lands, [if the petitioner is his heir, say] and was succeeded by the petitioner, the said *A.B.*, his eldest son [or otherwise, as the case may be], and nearest and lawful heir in the said lands [or when the petitioner is a donee, or has otherwise acquired right from *K.L.*, say], That the said *K.L.* disposed the said lands [or conveyed his whole estate, heritable and moveable, [or otherwise, as the case may be], to the petitioner, the said *A.B.*, conform to disposition or general disposition [or otherwise, as the case may be], dated [specify date], granted in his favour by the said *K.L.*, who died unserved and having only a personal right to the said lands; [and if the deed be granted under any real burden, or condition, or qualification, add] but always under the real burden, &c.; [and if the deed be granted in trust, or for specific purposes, add] but always in trust or for the uses, ends, and purposes mentioned in the said general disposition [or otherwise, as the case may be].

May it therefore please your Lordship to find the facts above set forth proved, and that the petitioner is entitled to procure himself infest in the foresaid lands, in terms of "The Conveyancing (Scotland) Act, 1874" (*h*), and to decern.

According to Justice, &c.

[Signed by the petitioner or his mandatory] (*i*).

NOTE.—If any of the transmissions have been judicial, as by adjudication, act and warrant of Court, or otherwise, or if by any of the transmissions a part or parts only of the

lands are transferred, the necessary alterations may be made on the form of the petition (*k*).

(*a*) See section 28 of the Consolidation Act, *ante*, p. 91.

(*b*) That is to say, was the last person infeft in the lands.

(*c*) The reference should be as in Schedule O. of this Act, or as in Schedule (G.) of the Consolidation Act, *ante*, p. 45.

(*d*) If the reference is not to a recorded instrument, but to a recorded deed, here add the words "along with warrant of registration thereon in favour of," &c.

(*e*) The reference should be as in Schedule H. of this Act, or as in Schedule (D.) of the Consolidation Act, *ante*, p. 38.

(*f*) The reference should be as in Schedule (C.) of the Consolidation Act, *ante*, p. 36.

(*g*) In the event of E.F. having expedite a special or general service, the title should be made up in the mode mentioned in note (*a*) to section 10, *ante*, p. 334, in the event of there being no intervening heir with a personal right under section 9.

(*h*) Where there are several separate lands or estates, here add, if desired, a prayer to grant warrant to the Director of Chancery to issue separate extract decrees applicable to one or more of such separate lands or estates; see note (*l*), *ante*, p. 336.

(*i*) As to the mandate required, see note (*c*) to section 29 of the Consolidation Act, *ante*, p. 93.

(*k*) For example—"That by decree of adjudication obtained at the instance of the petitioner, the said A.B., in an action before the Lords of Council and Session against the said K.L., dated the day of _____, the said Lords adjudged the said lands from the said K.L., and decerned and declared the same to belong to the said A.B."

11. Error in character in which heir entered not to affect entry (*a*).—Notwithstanding any existing law or practice it shall be no objection to any precept or writ from Chancery (*b*), or of clare constat (*c*), or to any decree of service whether general (*d*) or special, or to any

writ of acknowledgment (*e*), whether obtained before or after the commencement of this Act (*f*), or to any other decree, or to any petition, that the character in which an heir is or may have been entitled to succeed is erroneously stated therein ; provided such heir was in truth entitled to succeed as heir to the lands specified in the precept, writ, decree, or petition (*g*).

(*a*) The object of this section is to relax the rule that the service of an heir must be in the character in which he was entitled to succeed, or at least in a character which by necessary implication involved the character in which he was entitled to succeed ; see Bell's Lectures, 1st ed., p. 1014, 2d ed., p. 1090. The rule was not quite so strictly enforced in the case of precepts or writs of *clare constat* ; but the provisions of this section are made applicable to them as well as to services.

(*b*) That is to say, Crown precepts of *clare constat* or Crown writs of *clare constat*.

(*c*) That is to say, precepts or writs of *clare constat* by subject superiors.

(*d*) There is an inconsistency between this enactment as far as regards decrees of general service, and the proviso at the end of the section, since no lands are ever specified in a decree of general service. On a liberal construction, the enactment and proviso may possibly be read together as meaning that, provided the heir was entitled to expedite a general service in the proper and requisite character, an error in setting forth the character shall not invalidate the decree or the titles made up thereon. But this construction is attended with so much doubt that the greatest care should still be taken to set forth in a petition for general service the proper character of the heir.

(*e*) As to writs of acknowledgment, see section 63 of this Act.

(*f*) This clause gives retrospective effect to the provisions of the section.

(*g*) The Act does not afford any means of establishing the fact that the heir was in truth entitled to succeed to the lands. All, therefore, that can be done is to preserve any available documentary evidence on the subject, till the expiry of the prescriptive period.

12. Heir not liable beyond value of estate.—May renounce (*a*).—An heir shall not be liable for the debts

of his ancestor beyond the value of the estate of such ancestor to which he succeeds (*b*), and if an heir shall renounce the succession, the creditors of the ancestor shall have the same rights against the estate as upon a renunciation according to the law before the commencement of this Act (*c*).

When an heir has, before renunciation, intromitted with the ancestor's estate, he shall be liable for the ancestor's debts to the extent of such intromission, but no further.

(*a*) The object of this section is to restrict the liability of an heir for his ancestor's debts to the value of the estate to which he succeeds, to make provision for the heir's renunciation, and in that case to limit his liability to the extent of his intromissions before renunciation. Previously, an heir expeding a general service was liable for all the debts of the ancestor to whom he succeeded, whatever might be the value of the succession, unless he had expedie the service *cum beneficio inventarii* under the Act 1695, c. 24, or with specification annexed, under section 49 of the Consolidation Act. The provisions of section 9 of this Act, under which a personal right to lands is vested without service or other procedure in the heir entitled to succeed to the lands, rendered necessary some provision such as is contained in the present section, lest the vesting of the personal right should, without the heir being able to prevent it, operate like a service in imposing universal liability for his ancestor's debts.

(*b*) It is not clear whether the value is to be ascertained as at the date of the ancestor's death, or as at the date when the question of value is raised.

(*c*) As to the law on this subject before the commencement of the Act, see Bell's Comm., 5th ed., vol. i., p. 713.

13. *Right of any person to succession as heir may be challenged within twenty years* (*a*).—The right of any person to an estate in land (*b*) by succession as heir acquired after the commencement of this Act (*c*) may, at any time within twenty years of his infestment as heir and his entering into possession of such estate (*d*), but not thereafter (*e*), be challenged by any one who would have been entitled (*f*) to challenge the decree of service of such person had he expedie a service according to the practice existing prior to this Act; and,

in the absence of evidence to the contrary, the date of his infeftment shall, for the purpose of this limitation, be assumed to be the date of entering into possession (*g*); and such challenge may be made by an action to negative or set aside the alleged right of succession (*h*), or to reduce any title expedite in virtue of such alleged right.

(*a*) The object of this section is to assimilate, as far as regards prescription, the right conferred on an heir by section 9 to the right acquired by service, the right of challenge being in both cases restricted to the period of twenty years after the heir's infeftment and entry into possession.

(*b*) The words "estate in land" here mean any interest in land, whether in fee or security, and whether beneficial or in trust, or any real burden on land, and include an estate of superiority; see interpretation clause (section 3, paragraph 2), *ante*, p. 301.

(*c*) Viz., 1st October 1874.

(*d*) The period of twenty years is to be reckoned from the date of the infeftment, although the heir may have been served, or have entered into possession of the estate, long before taking infeftment, prescription running only upon a recorded title. Under the previous system prescription ran from the date of the retour or service; see the Act 1617, c. 13.

(*e*) This provision applies merely to questions arising between competing heirs, and is distinct from that contained in section 34 in regard to the positive prescription applicable to land rights generally.

(*f*) As to the persons entitled to challenge a decree of service, see Shand's Practice of the Court of Session, p. 621.

(*g*) If it is proved that the heir did not enter into possession till after his infeftment, the prescriptive period will run, not from the date of the infeftment, but from the date of his entry into possession.

(*h*) If no title has been expedite in virtue of the alleged right of succession, an action of reduction cannot be raised, and the challenge should therefore be made by an action of declarator, with such ancillary conclusions as the circumstances may render necessary or expedient.

14. *Legal remedies to prevent entry preserved* (a).—Nothing herein contained shall prejudice or affect the legal remedies of any person having lawful title and interest to prevent any other person from entering into possession of an estate in land as heir, or to remove him from possession, or to obtain sequestration of such estate, or the appointment of a judicial factor pending the trial of any question regarding the right of succession (b); and it shall be lawful for a court of competent jurisdiction to regulate possession pending such trial, as the Court shall see just, notwithstanding the completion, under this Act, of the title of any person as heir.

(a) The object of this section is to guard against the possibility of the preceding provisions of the Act being held to impair the right of any person having title and interest to prevent the unlawful entry or possession of a person claiming to be the heir entitled to succeed.

(b) As to the circumstances in which the Court will sequester an estate and appoint a judicial factor, see *Padwick v. Stewart*, 3d June 1871, 9 Macph. 793, and cases there referred to.

15. *Redemption of Casualties* (a).—The casualties (b) incident to any feu created prior to the commencement of this Act (c) shall be redeemable on such terms as may be agreed on between the superior and the proprietor of the feu in respect of which they are payable: And, failing agreement, all such casualties, except those which consist of a fixed amount stipulated and agreed to be paid in money or in fungibles at fixed periods or intervals (d), may be redeemed by the proprietor of the feu (e) in respect of which the same are payable, on the following terms, viz., in cases where casualties are exigible only on the death of the vassal (f) such casualties may be redeemed on payment to the superior of the amount of the highest casualty, estimated as at the date of redemption (g), with an addition of fifty per cent.; and in cases where casualties are exigible on occasion of each sale or transfer of the property, as well as on the death of the vassal (h), such casualties

may be redeemed on payment of two and a-half times the amount of the casualty estimated as aforesaid payable on such occasions: Provided always, that where the casualty consists of a sum calculated on the footing of an annual sum being paid for each year from the date of the last entry (*i*), such casualty may be redeemed upon payment of eighteen times the amount of such annual sum: And provided always, that before any such redemption, otherwise than by agreement, shall be allowed, any casualty which has become due shall be paid, and in the case of such annual sums the amount of such sums since the last payment thereof, and that the redemption shall apply only to future and prospective casualties (*k*).

(*a*) The object of this section is to enable proprietors to redeem all casualties, except those of fixed amount and payable at fixed intervals, on payment to the superior of a sum of money, the amount of which depends upon the incidence of the casualties, viz. (1) if the casualties are exigible only on the death of each vassal, the amount of the highest casualty with an addition of fifty per cent., (2) if the casualties are exigible on each sale or transfer of the property as well as on the death of each vassal, two and a-half times the amount of the highest casualty, and (3) if the casualty consists of a sum calculated on the footing of an annual sum being paid for each year from the date of the last entry, eighteen times the amount of such annual sum. The power to compel redemption of the casualties is confined to the proprietor; but under section 17 the superior is entitled to insist on the redemption money being converted into an additional feu-duty.

(*b*) This clause being merely permissive, casualties here include not merely uncertain casualties, but also fixed sums payable at fixed intervals; see interpretation clause (section 3, paragraph 7), *ante*, p. 302.

(*c*) Viz., 1st October 1874.

(*d*) On reference to the interpretation clause (section 3, paragraph 7), *ante*, p. 302, it will be seen that the casualties that may thus be compulsorily redeemed are the relief duty payable on the entry or succession of an heir, the composition or other duty payable on the entry of a singular successor, whether by law or under the conditions of the feu, and all payments exigible in lieu of such duties and compositions, unless such payments consist of fixed amounts payable at fixed periods or intervals. The section applies only to feus created prior to the commencement of the Act, as

section 23 abolishes in future feus all casualties except such as consist of fixed amounts expressly stipulated to be paid at fixed intervals.

(e) The power here given to the proprietor of the feu with reference to the casualties payable in respect of his feu is by section 19 expressly made applicable to the case of a mid-superior with reference to the casualties payable in respect of his mid-superiority.

It has been decided that the words "proprietor of the feu" include a proprietor infest, and so constructively entered under section 4 of the Act, although the last vassal to whom the superior granted an entry is still alive; *Morris v. Brisbane*, 21st Feb. 1877, 4 Rettie 515. On the other hand, a person who has not taken infestment, but has merely a personal right by an unrecorded conveyance, does not seem entitled to be regarded as "the proprietor of the feu." See opinion of Lord President Inglis in the case of *The Edinburgh Roperie Co. v. the Mags. of Edinburgh*, 10th July 1877, 4 Rettie 1032.

Where the feu has come to be divided, and the proprietor of one part, who is infest, and so constructively entered with the superior, desires to take advantage of the provisions of this section, he is not bound to redeem the casualties of the entire feu, but is entitled to redeem the casualties merely in so far as applicable to his part thereof; *The Edinburgh Roperie Co. v. the Mags. of Edinburgh*, 10th July 1877, 4 Rettie 1032, affirmed by the House of Lords 12th Nov. 1878.

(f) That is to say, in the ordinary case; as casualties were due by law, apart from stipulation, only on the death of the last entered vassal.

This provision applies to every case where the feu charter does not expressly stipulate for payment of a casualty on each sale or transfer of the property as well as on the death of each vassal, or for payment of an annual sum from the date of the last entry. A prohibition of subinfeudation, fenced with a clause of irritancy, though designed to enable the superior to demand a casualty on each sale or transfer of the feu, does not entitle the superior to demand more than the amount of the highest casualty with an addition of fifty per cent.; *Morris v. Brisbane*, 21st Feb. 1877, 4 Rettie 515.

(g) The highest casualty is generally the casualty of composition, which is payable on the entry of a singular successor. Where the entry of singular successors is untaxed, the composition is a year's rent of the lands, under deduction of (1) the feu-duty, (2) public burdens, (3) annual burdens imposed with the superior's consent, (4) a reasonable allowance for annual repairs, and (5) one-fifth of the teindable rental, whether the teinds have been valued or not, provided the superior is not the proprietor of the teinds. Where the lands have been sub-feued, the composition is not the actual rent, but a year's sub-feu-duty, with a year's legal interest on any price or grassum that may have been paid in consideration of the

Page 345, end of note (e).

6 R. (H.L.) 1,
and 16 Scot. Law
Rep. 127.

sub-feu. See Bell's Lectures on Conveyancing, 1st ed., p. 1057, 2d ed., p. 1136. As to the mode of calculating the year's rent where the lands are owned by a railway company, see *Hill v. Caledonian Railway Co.*, 21st Dec. 1877, 5 Rettie 386. It has been recently held that the proceeds of mines and minerals must be taken into account; *Allan's Trs. v. Duke of Hamilton*, 12th Jan. 1878, 5 Rettie 510.

As to the terms sufficient to include singular successors in clauses taxing entries, see Bell's Lectures, 1st ed., p. 1058, 2d ed., p. 1138, and *The Mags. of Inverkeithing v. Ross*, 30th Oct. 1874, 2 Rettie 48.

Page 346, end of note (g).

Swright v. Straiton Estate Co., 8th July 1879, 6 R. 1208; and the value of shootings though not actually let. — *Stewart v. Bulloch*, Jan. 14, 1880, 8 R. 381.

(h) See the case of *Morris v. Brisbane*, referred to in note (f) *supra*.

(i) This is a very rare form of casualty.

(k) Strictly speaking, a legal casualty does not become due till demanded by the superior; see note (k), *ante*, p. 320. But the meaning of this provision seems to be that in all cases before the proprietor can take advantage of the provisions of this section, he must pay any casualty that the superior might have lawfully demanded from him.

16. Casualties redeemed to be discharged (a).—The superior (b), unless he shall elect to have the redemption money converted into an annual sum as herein-after provided (c), shall, on payment or tender (d) of such redemption money, be bound, at the expense of the party redeeming, to discharge all right to the casualties so redeemed, and such discharge, which may be in the form set forth in Schedule F. hereto annexed, or in a similar form (e), being recorded (f) in the appropriate register of sasines at the expense of the party redeeming, shall operate as a valid and effectual discharge of such casualties: Provided always, that when the superior shall have granted an heritable security affecting the superiority, no discharge to be granted to the vassal so redeeming shall be effectual without the consent of the creditor in such heritable security (g).

(a) The object of this section is to render it obligatory on superiors to grant discharges of casualties redeemed under the immediately preceding section, and to provide a short form of discharge.

(b) Including the Crown, the Prince, all subject-superiors, and

mid-superiors ; see interpretation clause (section 3, paragraph 3), *ante*, p. 30.

(c) Viz., in section 17, *post*, p. 348.

(d) If the superior declines to receive the sum tendered, on the ground that it is insufficient, the proprietor will require to raise an action of declarator.

(e) As the Act does not prescribe the use of the form in the Schedule, a discharge otherwise sufficient will not be invalidated by its being disconform to the Schedule, and a charter of novodamus may still be used for the purpose of discharging casualties.

(f) With warrant of registration endorsed thereon ; see section 33.

(g) That is to say, no discharge without the consent of the heritable creditor shall be effectual against such creditor or his successors having right to the security.

If the superior cannot get his creditor's consent, he may dispense with it by electing to commute the redemption money under section 17.

SCHEDULE F.

FORM OF DISCHARGE OF CASUALTIES (a).

I, *A.B.* [*design him*], proprietor of the estate of superiority in the lands of [*describe or refer to (b) a description of the lands discharged*], whereof the estate of property (c) belongs to *C.D.* [*design him*], in consideration of [*state cause of granting*], hereby discharge in favour of the said *C.D.*, and his heirs and successors, all casualties incident to my said estate of superiority exigible in respect of the said estate of property (c) [*if only some of the casualties are redeemed (d) specify what they are*], and I consent to the registration hereof for preservation. In witness whereof [*testing clause*] (e).

(a) The stamp duty seems to be the same as if the discharge were conveyance for the same price or other consideration.

(b) As to the mode in which the reference should be made, see section 61.

(c) Or estate of mid-superiority ; see section 19, *post*, p. 351.

Page 347, end of note (a).

See, however, *Gibb v. Commissioners of Inland Revenue*, 24th Nov. 1880, 8 R. 120.

(d) This direction is applicable only to the case of redemption by mutual arrangement. If the redemption is compulsory, all the casualties are redeemed.

(e) As to the requisites of the testing clause, see section 38.

17. Option to superior of payment of an annual sum (a).—It shall be lawful for the superior (b) to elect that the redemption money above provided (c) shall be converted into an annual sum, equal to four per cent. upon the capital; and in that case, a memorandum in the form set forth in Schedule G. hereto annexed, or in a similar form (d), of the amount of such annual sum, shall be signed by the parties or their respective agents (e), and recorded (f) in the appropriate register of sasines at the expense of the party redeeming, whereupon such annual sum shall be deemed to be feu-duty with all the legal qualities thereof, and shall form an addition to any existing feu-duty (g), and the superior's right to all casualties shall be held to be discharged (h).

(a) The object of this section is to give superiors the option of commuting into an additional feu-duty the sum payable by a vassal on his exercising his power to redeem casualties, and to provide a short form of deed for the purpose of effecting the commutation.

(b) Including the Crown, the Prince, all subject-superiors, and mid-superiors; see interpretation clause (section 3, paragraph 3), *ante*, p. 302.

(c) Viz., in section 15, *ante*, p. 343.

(d) As the Act does not prescribe the use of the form in the schedule, a deed otherwise sufficient will not be invalidated by its being disconform to the schedule, and a charter of novodamus may be used for the purpose of effecting the commutation.

(e) In order to bind his client, the agent must have authority to sign the memorandum; but it does not seem necessary that the authority should be in writing. Whether the authority must be expressly conferred, or may be merely implied, is very doubtful. It is to be regretted that the Act should have sanctioned the signature of an agent without guarding against the possibility of his authority being called in question at a time when any evidence of authority may be unattainable.

(f) With warrant of registration endorsed thereon; see section 33.

(g) As a feu-duty does not bear interest unless expressly stipulated for in the feu charter, the additional feu-duty will not bear interest unless the original feu-duty did so.

(h) The consent of the superior's heritable creditors is not required to the commutation, as the additional feu-duty will fall under their securities in lieu of the casualties commuted.

SCHEDULE G.

FORM OF MEMORANDUM CONSTITUTING A FEU-DUTY OR
ADDITIONAL FEU-DUTY (a).

It is agreed between *A.* [*name and designation of superior*] immediate lawful superior of the lands of [*describe or refer to (b) a description of the lands*] on the one part, and *B.* [*name and designation of proprietor of estate of property (c)*] the proprietor of the dominium utile (*c*) of the said lands on the other part, that the dominium utile (*c*) of the said lands shall, from and after the term of [*state term*], be liable in payment to the superior thereof of a feu-duty of £ [or if there be a feu-duty already payable, of an additional feu-duty of £ over and above the existing feu-duty of £]; and that yearly, at two terms in the year [*state the terms at which the feu-duty is to be paid, or* and that at the term of (*state term*) yearly (*d*)], beginning the first term's payment [*state term, and whether with interest (e)*]; which feu-duty [or additional feu-duty] is constituted in respect of [*state here whether the additional feu-duty is in respect of a commutation of casualties (f) or of carriages, &c. (g), or as the case may be*]. In witness whereof [*testing clause*] (*h*).

NOTE.—If the memorandum be executed by the agents of either or both of the parties, it will be stated in the testing clause that the memorandum is signed by them in that capacity for and on behalf of their constituent or respective constituents (*i*).

(a) The stamp duty seems to be the same as if the memorandum were a conveyance in consideration of the total amount of feu-duty

which will be payable during the period of twenty years following the date of the deed ; see section 72, sub-sec. 2, of the Stamp Act of 1870.

Page 350, end of
note (a).

See, however,
*Gibb v. Commissioners of Inland
Revenue*, 24th
Nov. 1880, 8 R.
120.

(b) As to the mode in which the reference should be made, see section 61.

(c) Or estate of mid-superiority ; see section 19, *post*, p. 351.

(d) The additional feu-duty will fall to be paid at the same term or terms as the original feu-duty, unless otherwise arranged by the parties.

(e) See note (g), *ante*, p. 349.

(f) Under section 17, *ante*, p. 348.

(g) Under sections 20 and 21, *post*, p. 352 *et seq.*

(h) As to the requisites of the testing clause, see section 38.

(i) In order to prevent questions being subsequently raised as to the agents' authority, the agents should be authorised by a deed, which should be specified either in the body of the memorandum or in the testing clause ; see note (e) to section 17, *ante*, p. 348.

18. *Entails not to bar redemption* (a).—Casualties subject to the fetters of an entail may be redeemed as aforesaid (b) notwithstanding such entail, the redemption money being consigned (c) in one of the banks in Scotland incorporated by royal charter or Act of Parliament in name of the accountant of the Court of Session, who shall be allowed a reasonable fee for his trouble out of such money, and being applied by the heir of entail in possession under the orders of the said Court (d) for the benefit of the entailed estate (e), the accruing interest being payable to the heir of entail in possession during the time the same shall arise ; provided always, that when the redemption money so consigned during any period of three years shall not exceed in whole the sum of one hundred pounds, the same may at the end of that period be paid over by the accountant for the time, without orders or authority from the Court, to the person or persons or the representatives of the person or persons in possession of the entailed estate at the time or times when the consignment or consignments was or were respectively made. Or the heir

of entail in possession of an entailed estate at the time, when any casualty shall be redeemed may, in his option, elect, in lieu of such consignment in bank, that the redemption money shall be converted into an annual sum equal to four per centum upon the capital, in which case a memorandum as before provided (*f*) shall be signed and recorded, whereupon such annual sum shall be deemed to be feu-duty, with the qualities and in manner and to the effect before provided (*f*).

(*a*) The object of this section is to prevent the entail of an estate of superiority being a bar to the redemption or commutation of casualties, and to provide for the application of any redemption money payable by the vassals of an heir of entail.

(*b*) Viz., in section 15, *ante*, p. 343.

(*c*) The person paying the redemption money must see that it is duly consigned.

(*d*) An application for authority to uplift and apply the consigned money must be presented in ordinary form, except in the circumstances specified in the proviso following this clause.

(*e*) The application of the money is made to depend entirely upon the discretion of the Court.

(*f*) Viz., in section 17, *ante*, p. 348.

19. *Redemption of casualties by a mid-superior* (*a*). —The person in right of any estate of superiority (*b*) created prior to the commencement of this Act (*c*) shall be entitled to redeem the casualties, legal or conventional, which may be payable to an over superior, in the same manner and on the same terms and conditions as are herein-before (*d*) enacted with respect to the redemption of casualties by a person in right of an estate of property.

(*a*) The object of this section is to confer on mid-superiors the same powers as are conferred by the Act on proprietors of the *dominium utile* or estate of property, in regard to the redemption of casualties.

(*b*) The word "superiority" here means mid-superiority; see interpretation clause (section 3, paragraph 3), *ante*, p. 302.

(c) Viz., 1st October 1874.

(d) Viz., in sections 15, 16, 17, and 18, *ante*, p. 343 *et seq.*

20. *Commutation of carriages and services by agreement, or by Sheriff* (a).—Where carriages and services (b), or any of them, exigible by the superior (c), shall, for any period of five years (d), have been commuted to an annual money payment by agreement between the parties, whether reduced to writing or not, and whether express or implied from the conduct or actings of parties, and have not thereafter been exacted and performed (e), the said annual payment shall thereafter be deemed to be the value in all time coming of such carriages and services respectively, and the superior shall be bound to accept the same in lieu of such carriages and services respectively.

With respect to carriages and services (b) which have not been so commuted, it shall be competent to either party to apply to the Sheriff (f) within whose jurisdiction the lands lie to determine summarily the annual value thereof, and the determination of the Sheriff shall be final and not subject to review, and the superior shall be bound thereafter to accept of the annual sum so determined in lieu of such carriages and services (b).

(a) The object of this section is to enable either superior or vassal to commute into an annual money payment agricultural and other services exigible by the superior. The services of personal attendance, hosting, hunting, watching, and warding were abolished by the Act 1 Geo. I. c. 54, which, however, left in force such services as were not of a military character; see Bell's Lectures on Conveyancing, 1st ed., p. 590, 2d ed., p. 625. The commutation authorised by the present section may be either by agreement, express or implied, or by the determination of the Sheriff.

(b) It is not clear whether the word "services" includes the delivery of kain fowl, as to which see *Hope v. Aitken*, 18th January 1872, 10 Macph. 347.

(c) Including the Crown, the Prince, all subject superiors, and mid-superiors; see interpretation clause (section 3, paragraph 3), *ante*, p. 302.

(*d*) The period of five years must, apparently, be subsequent to the commencement of the Act.

(*e*) The result of this clause is that the mere payment of the money for five years will operate as an agreement to commute, unless it has been expressly agreed between the parties that the payment of the annual sum is not to have this effect.

(*f*) Including Steward, Sheriff Substitute, and Steward Substitute; see interpretation clause (section 3, paragraph 8), *ante*, p. 302.

21. Commuted value to be feu-duty.—*Not barred by entails (a).*—The annual money value, where ascertained as aforesaid (*b*) by agreement, may (*c*) be stated in a memorandum in the form set forth in the said Schedule G. hereto annexed (*d*), or in a similar form (*e*), signed by the parties or their respective agents (*f*), and on such memorandum, or the extract decree pronounced by the Sheriff, as the case may be, being recorded (*g*) in the appropriate register of sasines, such annual money value shall be deemed to be feu-duty with all the legal qualities thereof, and shall form an addition to any existing feu-duty (*h*), and the superior's right to the carriages and services shall be held to be discharged (*i*). Such discharge, redemption (*k*), and commutation may be validly effected notwithstanding the fetters of any entail (*l*).

(*a*) The object of this section is to provide a simple mode by which the annual value of carriages and services commuted under the immediately preceding section may be converted into a feu-duty, and to prevent the fetters of any entail operating as a bar to the commutation.

(*b*) Viz., in section 20, *ante*, p. 352.

(*c*) This provision being merely permissive, neither party can compel the other to execute the memorandum. But, assuming that a binding agreement has been constituted, either party may raise an action of declarator of its terms, and the extract decree may, it is thought, be competently recorded in the appropriate register of sasines.

(*d*) Schedule G. is printed *ante*, p. 349.

(e) As the Act does not *prescribe* the use of the form in the schedule, a deed otherwise sufficient will not be invalidated by its being disconform to the schedule.

(f) As to the authority of the agents, see note (e) to section 17, *ante*, p. 348.

(g) With warrant of registration thereon; see section 33, *post*.

(h) As a feu-duty does not bear interest unless expressly stipulated for in the feu-charter, the additional feu-duty will not bear interest unless the original feu-duty did so.

(i) The consent of the superior's heritable creditors is not required to the commutation, as the additional feu-duty will fall under their securities in lieu of the carriages or services commuted.

(k) The word "redemption" has been inserted here by mistake; the provisions of the Act as to redemption apply only to casualties.

(l) Whether an entail of the superiority or of the estate of property.

22. Monopolies of superior's agents annulled (a).— All conditions, whether made before or after the commencement of this Act, to the effect that the superior shall be entitled to select or appoint an agent to prepare or record sasines or warrants of registration, or conveyances or other deeds (b) having reference to any estate in land (c), or restraining or restricting the proprietor of any estate in land (c) in the selection of an agent to prepare or record such sasines, warrants, conveyances, or other deeds (b), or securing any privilege or monopoly to the superior's agent, or to any agent or agents selected or appointed by him, or to the effect that any proprietor of lands (d) shall be bound to intimate to the superior of such lands any change of ownership, whether by succession or singular title, except as herein-before provided (e), or to pay any fees or expenses in connection with such change of ownership (f); and further all conditions made after the commencement of this Act (g), to the effect that it shall not be lawful

to the proprietor of lands to subfeu the same to be holden of himself as immediate lawful superior thereof, or to grant conveyances thereof to be holden a me vel de me or with an alternative manner of holding (*h*), shall, with all irritant clauses applicable thereto, be null and void, and not capable of being enforced, and all enactments to the contrary of, or at variance with, this enactment in any Act of Parliament (*i*) shall be, and the same are hereby, repealed.

(*a*) The object of this section is twofold—(*first*) to annul all monopolies claimable under either existing or future feu rights by the agents of superiors, with reference to the preparation or recording of the vassal's titles; and (*second*) to annul prohibitions of subinfeudation in all feu rights granted after the commencement of the Act. The ostensible reasons for the stipulation that the superior's agent should prepare or record the vassal's titles were to ensure the insertion therein of all the conditions of the feu, and to prevent the vassal depriving the superior of the right to a casualty by assigning a charter before infeftment. The force of these reasons being much weakened by the provisions of the Act in regard to casualties and charters by progress, advantage has been taken of this opportunity to get rid of monopolies which occasioned a great deal of irritation in the profession. A temporary exception is, however, made by section 24 in the case of feus agreed to be granted, but not actually granted, before the commencement of the Act. Prohibitions against subinfeudation or against an alternative holding were chiefly designed to ensure the payment of a casualty on each sale or transfer of the feu. Such prohibitions are, however, annulled only in future feus, as superiors may have substantial interest to enforce them in existing feus.

(*b*) The words conveyance and deed include almost every conceivable writing; see interpretation clause (section 3, paragraph 4), *ante*, p. 302.

(*c*) "Estate in land" means any interest in land, whether in fee, liferent, or security, and whether beneficial or in trust, or any real burden on land, and here includes an estate of mid-superiority; see interpretation clause (section 3, paragraph 2), *ante*, p. 301.

(*d*) The word "lands" here means all subjects of heritable property held of a superior; see interpretation clause (section 3, paragraph 1), *ante*, p. 301.

(*e*) Viz., in section 4, sub-section 2, which provides that the proprietor last entered shall continue personally liable to the superior for performance of the whole obligations of the feu, until notice of the change of ownership shall have been given to the superior.

(*f*) The superior is not entitled to engross in his chartulary, at the expense of his vassal, the conveyance by the recording of which the vassal was constructively entered; *Magistrates of Edinburgh v. Whitehead*, 18th May 1876, 3 Rettie 663.

(*g*) Viz., 1st October 1874.

(*h*) An *a me vel de me* or alternative holding is now superseded by section 4 of the Act; see note (*c*) *ante*, p. 26, and notes (*h*) and (*i*) *ante*, p. 308 *et seq.*

(*i*) The Acts of Parliament here referred to are private Acts authorising heirs of entail, &c., to feu out their lands.

23. *In absence of express condition, no casualties in feus created after commencement of Act.—Increase or reduction of feu-duty or periodical additional payment may be stipulated* (*a*).—In feus (*b*) granted after the commencement of this Act (*c*) the annual feu-duty shall be of fixed amount or quantity (*d*), and no casualties (*e*) or duties shall by law, irrespective of express condition or covenant, be payable to the grantor of the feu, or his successors in the superiority (*f*), and it shall not be lawful to condition or stipulate for any casualty to be paid on the succession of an heir (*g*) or the acquisition of a singular successor (*h*), or in any way except at fixed intervals; but it shall be lawful to condition or stipulate for a permanent increase or reduction of the feu-duty (*i*), or for payment of a casualty in the form of a periodical fixed sum or quantity, provided that the amount of such increase or reduction, or of such periodical additional sum or quantity, shall be certain, and that the time or times at which such additional sum or quantity shall be exigible, or from and after which such increase or reduction is to have effect, shall also be certain and not dependent upon any event or occurrence (*k*) except the occurrence or recurrence of the time or times at which under the terms of such condition or stipulation the periodical additional sum or quantity is made exigible, or the increase or reduction of feu-duty is to have effect (*l*).

(a) The object of this section is to abolish casualties, legal or conventional, in feus granted *after* the commencement of the Act, nothing of the nature of a casualty being payable irrespective of express stipulation, and the parties being allowed to condition or stipulate only for a permanent increase or reduction of the feu-duty, or for payment of a casualty in the form of a fixed sum payable at fixed periods. As regards the casualties incident to feus granted *before* the commencement of the Act, sections 15 to 19 inclusive, *ante*, pp. 343-351, provide for their redemption or their commutation into a fixed feu-duty. Consequently, casualties properly so called, which, through the uncertainty of their incidence and often of their amount, were most vexatious, will gradually cease to exist.

(b) Including blench holdings; see interpretation clause (section 3, paragraph 6), *ante*, p. 302.

(c) Viz., 1st October 1874.

(d) It is still competent to stipulate for a feu-duty of a fixed quantity of grain.

(e) The word casualties here includes relief-duty and composition; see interpretation clause (section 3, paragraph 7), *ante* p. 302.

(f) Superiority includes mid-superiority; see interpretation clause (section 3, paragraph 3), *ante*, p. 302.

(g) That is to say, relief-duty.

(h) That is to say, composition.

(i) That is to say, that after a certain period the feu-duty shall be permanently of a fixed amount, either higher or lower than that paid for the first period.

(k) Not dependent, for example, upon the death of the vassal or any other person, nor upon the sale or transfer of the feu.

(l) Under this provision it is now customary to stipulate for a duplicand of the feu-duty, payable at the end of every period of a certain number of years, varying between nineteen and twenty-five.

24. *Where feu rights stipulating or inferring casualties are contracted to be granted (a).*—In all cases where superiors have agreed or contracted prior to the passing of this Act (b) to feu land (c), but have not granted the feu rights thereto prior to the com-

commencement of this Act (*d*), and but for the provisions of this Act (*e*) would have been entitled in the feu rights to stipulate for the payment of casualties (*f*) as well as of feu-duties, nothing in this Act contained shall be construed or held as depriving such superiors of their right to such casualties (*f*), but such casualties (*f*) may, if desired by such superiors or their vassals in such feus, be converted into annual sums equal to four per cent. on the amount of the price of the redemption of such casualties ascertained as provided in section fifteen hereof, and such annual sums shall be deemed to be feu-duties, with all the legal qualities thereof, and shall form additions to the feu-duties which may have been contracted for (*g*), and in the feu rights to be granted of such feus superiors shall be entitled, in the event of the casualties being converted as aforesaid, to state as one feu-duty the feu-duty which has been contracted for or agreed upon, and that formed by the converted casualty (*h*), and shall have all competent remedies for recovery thereof. But in the event of neither the superiors nor the vassals in such feus desiring to convert casualties (*f*) agreed or contracted for before the passing of this Act (*b*) as aforesaid, it shall be competent in such feu rights to stipulate for payment of the casualties which (*f*) the vassals may expressly or by force of law (*i*) have agreed or contracted to pay, in the same manner as might have been done prior to the commencement of this Act (*d*); and it shall also be competent in such feu rights to stipulate that the same (*k*) shall be recorded by the agent of the superior at the expense of the vassal, if such or a similar stipulation shall have been made and agreed prior to the passing of this Act (*b*) in the agreement or contract for feuing such land.

(*a*) The object of this section is to make special provision for the exceptional case of feu-rights having been granted after the commencement of the Act in implement of agreements entered into before the passing of the Act. Such agreements may have been entered into on the footing that the legal casualties should be payable, and yet section 23 renders it unlawful to stipulate for such casualties in feu rights granted after the commencement of the Act. The present

section provides for this special case by enabling either party to insist on the commutation of such casualties, and by allowing payment of the casualties to be stipulated for in the feu rights in the event of neither party desiring to have them commuted. Provision is also made for the case of the parties having agreed before the passing of the Act that the feu right should be recorded by the superior's agent.

(b) Viz., 7th August 1874.

(c) "Land" here includes all subjects of heritable property which were or might have been held of a superior according to feudal tenure; see interpretation clause (section 3, paragraph 1), *ante*, p. 301.

(d) Viz., 1st October 1874.

(e) Viz., in section 23, *ante*, p. 356.

(f) The word "casualties" here means all casualties except those which consist of fixed sums payable at fixed intervals.

(g) As a feu-duty does not bear interest unless expressly stipulated for, the additional feu-duty will not bear interest unless it was agreed that the original feu-duty should do so.

(h) Thus dispensing with the memorandum required by section 17 in the case of casualties incident to feus created prior to the commencement of the Act.

(i) By force of law, untaxed casualties of relief duty and composition were exigible in feu rights entered into prior to the commencement of the Act, unless otherwise arranged between the parties.

(k) That is to say, that the original feu rights shall be so recorded. This clause does not extend to the recording of subsequent conveyances of the feu or other titles of the vassals.

25. Distinction between burgage and feu abolished.—*Registration of writs in burgh register.*—*Provisions for lands in Paisley held by booking tenure* (a).—The proprietors of and all others having any estate in land (b) held burgage shall have the same right and interest in such estate as would have belonged to them under this Act or otherwise had the tenure been feu instead of burgage, and there shall not after the commencement of this Act (c) be any distinction between estates in land (b) held burgage and estates in land held feu, in so far as regards the conveyances relating thereto (d), or the completion of titles (e), or any of the matters

or things to which the provisions of this Act relate (*f*); and the proprietors (*g*) of estates in land (*h*) which were held burgage shall be entitled to grant feus of the same in the same manner and to the like effect as if such estates in land had been held by feudal tenure (*i*); and the titles (*k*) of all such feus granted before the commencement of this Act (*c*) shall be unchallengeable on the grounds that such feus are of land held by burgage tenure (*l*), or that such titles have been recorded in the burgh register of sasines (*m*).

Writs affecting land which immediately prior to the commencement of this Act (*c*) was held burgage shall be recorded in the burgh register of sasines (*n*).

The provisions of this section in regard to land held by ordinary burgage tenure shall be applicable also to lands in the burgh of Paisley held by the peculiar tenure of booking (*o*), except that writs affecting land in said burgh held by the tenure of booking shall be recorded in the register of booking therein (*p*).

(*a*) The object of this section is to abolish burgage tenure (including the tenure of booking peculiar to Paisley) in so far as regards conveyancing, and to confer upon the proprietors of lands formerly held burgage the same rights and interests as they would have if the lands were held feu. Burgage tenure is that by which royal burghs hold of the Sovereign the houses and lands that lie within the limits described in their charters of erection. The corporation or whole body of the burgh is the vassal, the particular title which any burgess has to a share of the common subject being merely the proof of his right thereto in questions with the corporation or its other members. Hence the bailies or magistrates acted as the representatives of the Sovereign in receiving resignations and granting new infeftments to the individual burgesses, and the infeftments were recorded in a register of sasines kept for each burgh (with a few exceptions, mentioned in note (*a*), *ante*, p. 281). These peculiarities of burgage tenure gave rise to a special system of conveyancing, for the details of which reference is here made to the various sections of the Consolidation Act which apply to burgage subjects. The present section assimilates estates in land held burgage to estates in land held feu, and removes all doubt as to the competency of feus already granted of burgage subjects. But the burgh registers are still retained for writs affecting land which immediately prior to 1st October 1874 was held burgage.

(b) The words "estate in land" here mean any interest in land, whether in fee, liferent, or security, and whether beneficial or in trust; see interpretation clause (section 3, paragraph 2), *ante*, p. 301.

(c) *Viz.*, 1st October 1874.

(d) Section 26, *post*, 362, allows a certain option as regards the forms of conveyances.

(e) The effect of this provision is pointed out in the notes on the various sections of the Consolidation Act dealing with burgage subjects.

(f) These provisions, read along with the definition of "land" or "lands" in the interpretation clause (section 3, paragraph 1, *ante*, p. 301) have the effect of abolishing burgage tenure in so far as regards conveyancing. Where, however, burgage subjects have not been feued, either before or after the commencement of this Act, they will still be holden of Her Majesty for service of burgh used and wont.

(g) Including both the town council and individual proprietors.

(h) Notwithstanding the interpretation clause (section 3, paragraph 2, *ante*, p. 301), the words "estates in land" cannot be here read as meaning more than "land" or "lands."

(i) The feu rights require, however, to be recorded in the burgh register of sasines; see note (n), *infra*.

(k) Including security titles; see opinion of Lord Curriehill in *M'Cutcheon v. M'William*, 8th March 1876, 3 Rettie 565.

(l) Prior to the commencement of the Act there was little doubt that the magistrates and town council of a burgh were legally entitled to grant any portion of the territory remaining in their hands, to be held of themselves as superiors, in feu-farm. But no individual proprietor of burgage subjects could grant a feu thereof to be holden of himself. See Duff's Feudal Conveyancing, pp. 51 and 509; Bell's Lectures on Conveyancing, 1st ed., p. 737; *Mags. of Arbroath v. Dickson*, 19th March 1872, 10 Macph. 630. The present provision, however, has retrospective effect, and validates all feus of burgage subjects.

(m) Assuming that burgage subjects were competently feued, the titles required to be recorded in the register of sasines applicable to the county, not in the burgh register, which prior to the commencement of this Act was applicable only to subjects held by burgage tenure. But mistakes were frequently made as to the appropriate register. As the present provision validates the titles recorded in the burgh register before the commencement of the Act, it necessitates a search down to that date in the burgh register as well as in the county registers of sasines. It is, however, to be observed that this provision is applicable only to titles recorded prior to 1st October

1874 ; the subsequent titles of subjects feued prior to that date must, it is thought, be recorded in the register applicable to the county, as such titles cannot be regarded as " writs affecting land *which immediately prior to the commencement of this Act was held burgage.*"

(*n*). This provision is designed not merely to retain the burgh registers, but also to afford an easy way to determine whether a writ should in future be recorded in the burgh register or in the county register of sasines. The date of the commencement of the Act (1st October 1874) is taken as the point of time at which the question is to be determined once for all with reference to each particular property. If immediately prior to that date the property was held burgage, all titles and writs affecting it fall to be recorded in the burgh register, whether it may or may not be subsequently feued out ; and, on the other hand, if immediately prior to that date the property was held feu, by having been already feued out, then all writs affecting it fall to be recorded in the county register. This provision avoids the confusion that would have resulted had the selection of the register depended on whether the property continued to be held burgage or came to be feued out after the commencement of the Act. It also prevents the county registers gradually superseding the burgh registers as to the titles of the *dominium utile* of subjects in burgh, and the burgh registers remaining the appropriate registers for the titles of the *dominium directum* thereof.

The above construction of the clause is that adopted in the 2d. ed. of Bell's Lectures on Conveyancing, pp. 794 and 1109. But it is right to point out that so eminent a conveyancer as Dr Mowbray, W.S., takes a different view ; see his Analysis of the Conveyancing Act, p. 47, and his edition of Hendry's Styles, p. 203. He holds as inserted after the word " writs " the words " not being feu rights ; " but, with great deference, it is thought that this construction is strained, and attended with so many anomalies that it cannot be regarded as the true one. The only thing to suggest it is the analogy of the preceding provision as to the titles of feus granted before the commencement of the Act ; but as such titles should always have been, and generally were, recorded in the county register, it was proper not to alter the register appropriate to such titles, though titles recorded in the wrong register in time past might be declared unchallengeable.

(*o*) The tenure of booking peculiar to Paisley is so called because the titles of proprietors are entered in a book or register kept by the town clerk, which comes in place of the burgh register of sasines. Conveyances of land held by this tenure contained an obligation to book and secure, in place of the usual obligation to infest.

(*p*) Even although such land may be feued out ; see note (*n*) *supra*.

26 *Form of conveyances* (*a*).—Conveyances (*b*) of land hitherto (*c*) held burgage or by the tenure of

booking may be in the forms allowed by "The Titles to Land Consolidation (Scotland) Act, 1868," in regard thereto (*d*); provided always, that it shall not be necessary to insert in any such conveyances a procuratory or clause of resignation, and that such procuratory or clause if inserted shall be held *pro non scripto* (*e*), and that the forms applicable to lands held feu shall be applicable likewise (*f*), and shall have the same or a similar effect with reference to lands which were held burgage or by the tenure of booking prior to the commencement of this Act (*g*).

(*a*) The object of this section is to regulate the form of conveyances of lands hitherto held burgage or by the tenure of booking. Such conveyances may be either in the forms allowed by the Consolidation Act in the case of burgage subjects, or in the forms applicable to lands held feu. The form of a disposition of burgage subjects differs from that of a disposition of feudal subjects in only two respects, viz., in containing a clause expressing the manner of holding to be of Her Majesty in free burgage, and in substituting the words "ground-annual, cess, annuity," in place of the words "feu duties, casualties," occurring in the clause obliging the seller to relieve the purchaser of public burdens. The former form of ordinary disposition is thus still adapted to the case of the lands not having been feued out; while the latter form should be used where the lands have been feued out. Of course, where it is intended to create a feu, whether a feu charter or a feu disposition or a feu contract is used for the purpose, the holding must be expressed to be *de me*.

(*b*) See interpretation clause (section 3, paragraph 4), *ante*, p. 302.

(*c*) Viz., down to 1st October 1874.

(*d*) Viz., in section 7, *ante*. p 27.

(*e*) Section 7 of the Consolidation Act rendered it unnecessary to insert a procuratory or clause of resignation; but the present Act renders such a procuratory or clause incompetent.

(*f*) See note (*a*) *supra*.

(*g*) Viz., 1st October 1874.

27. *The word "dispone" unnecessary* (*a*).—It shall not be competent to object to the validity of any deed (*b*) or writing as a conveyance of heritage coming

into operation after the passing of this Act (*c*), on the ground that it does not contain the word “dispone,” provided it contains any other word or words importing conveyance or transference, or present intention to convey or transfer (*d*).

(*a*) The object of this section is to render the use of the word “dispone” unnecessary in any conveyance of heritage. It was quite settled that the use of that word was essential in a *mortis causa* conveyance of heritage (*Kirkpatrick v. Kirkpatrick's Trustees*, 19th March 1873, 11 Macph. 551, affirmed on this point on 23d June 1874, 1 Rettie, H.L., 37) till the rule of law was relaxed by the Consolidation Act, the twentieth section of which provided that the use of the word disporre, or other words importing a conveyance *de præsenti*, should not be necessary in any testamentary or *mortis causa* deeds or writings executed by any person who died after the commencement of that Act. That provision did not apply to deeds *inter vivos*; but it was never actually decided that the use of the word disporre was essential to the validity of an onerous conveyance *inter vivos*; Bell's Lectures on Conveyancing 1st ed., p. 548. The present section, however, removes all doubt as to the validity of any conveyance coming into operation after the passing of the Act.

(*b*) The word “deed” includes almost every conceivable writing; see interpretation clause (section 3, paragraph 4), *ante*, p. 302.

(*c*) Viz., 7th August 1874. As a general rule, deeds *inter vivos* come into operation on delivery, while *mortis causa* deeds come into operation at the death of the grantor.

(*d*) Words importing conveyance or transference, or present intention to convey or transfer, are not necessary in testamentary or *mortis causa* deeds. See section 20 of the Consolidation Act, *ante*, p. 63.

Notwithstanding the provisions of this section, the word “disporre” should still be preferred by conveyancers, as it is the most appropriate to import conveyance or transference.

28. Date of entry (*a*).—Where no term of entry (*b*) is stated in a conveyance (*c*) of lands (*d*), the entry shall be at the first term of Whitsunday or Martinmas after the date or last date of the conveyance (*e*), unless it shall appear from the terms of the conveyance (*c*) that another term of entry was intended (*f*).

(*a*) The object of this section is to fix a presumptive term of entry, where none is specified in a conveyance.

(*b*) As to the clauses in a conveyance fixing the term of entry and

assigning the rents, see sections 5 and 8 of the Consolidation Act, *ante*, pp. 21 and 29.

(c) The word "conveyance" includes almost every conceivable writing. See interpretation clause (section 3, paragraph 4), *ante*, p. 302.

(d) The word "lands" includes all subjects of heritable property, whether feudal or burgage; see interpretation clause (section 3, paragraph 1), *ante*, p. 301.

(e) As the execution of a deed may be accidentally delayed beyond the intended term of entry, it is not expedient to leave the term of entry to be implied under the provisions of this section.

(f) It is only from the terms of the conveyance that the intention to fix another term of entry can be gathered or inferred.

29. *General dispositions forming links of series of titles not objectionable on certain grounds (a).*—No decree, instrument, or conveyance under this Act, and no other decree, instrument, or conveyance (b), whether dated before or after the commencement of this Act, shall be deemed to be invalid because the series of titles connecting the person obtaining such decree, or expeding such instrument, or holding such conveyance, with the person last infeft, shall contain as links of the series two or more general dispositions (c), or because any general disposition (c) forming a part of the series does not contain a clause of assignation of writs.

(a) The object of this section is to remedy a defect in section 19 of the Consolidation Act, which provided that a general disposition of lands, whether by conveyance *mortis causa* or *inter vivos* or a testamentary deed, should be a sufficient warrant for a notarial instrument in favour of the disponee. In the case of *Smith v. Wallace*, 26th November 1869, 8 Macph. 204, it was held that to enable a person other than the original grantee to complete a title in this way he must have an assignation, general or special, of the general disposition. As a general disposition does not usually contain a clause of assignation of writs, this decision rendered it impossible to use two or more general dispositions as connecting links in the series of writs on which a title was to be made up. The present section, which has retrospective effect, remedies this state of matters, by allowing two or more general dispositions to be so used, and by rendering it unnecessary for any general disposition to contain a clause of assignation of writs.

(b) As to the extensive meaning given by the interpretation clause to the words "conveyance" and "instrument," see section 3, paragraph 4, *ante*, p. 302.

(c) Whether *mortis causa* or *inter vivos*. The provisions of this section apply only to general dispositions, not to special dispositions.

30. *Conveyances and discharges of real burdens.—Real burdens effectual in competition from date of recording; mode of completing title to real burdens (a).—It shall be lawful to record (b) in the appropriate register of sasines any deed, instrument, or writing whereby any real burden upon land is assigned, conveyed, or transferred, or is extinguished or restricted.*

No deed, instrument, or writing (c), executed or dated after the commencement of this Act, whereby any real burden upon land shall be hereafter assigned, conveyed, or transferred, shall be effectual in competition with third parties, unless the same is recorded (b) in the appropriate register of sasines; and such deed, instrument, or writing shall take effect in competition with third parties only from the date of such registration, and intimation according to the existing law and practice shall be unnecessary when such deed, instrument, or writing is recorded (d); and real burdens upon land may be assigned, conveyed, or transferred, and extinguished or restricted, and titles thereto may be completed as nearly as may be in the same manner as in the case of heritable securities constituted or requiring to be constituted by infestment in favour of the creditor as defined by "The Titles to Land Consolidation (Scotland) Act 1868," and the whole provisions, enactments, and forms of that Act and of this Act relative to the assignation, conveyance, or transference (e) and extinction or restriction (f) of bonds and dispositions in security, and other heritable securities constituted or requiring to be constituted by infestment as aforesaid, and to the completing of titles thereto (g), and also the forms referred to (h), as well as the provisions and enactments contained in section 117 of the said Act (i), shall be taken to apply and shall

apply as nearly as may be to real burdens upon land; provided always, that securities by way of ground annual, whether redeemable or irredeemable, shall continue to be heritable as regards the succession of the persons in right thereof (*k*); and provided also, that where a real burden upon land shall have been assigned, conveyed, or transferred by any deed, instrument (*l*), or writing which has entered the appropriate register of sasines, it shall not be necessary to produce to the notary public expeding any notarial instrument applicable to such real burden, or to set forth in such notarial instrument, as a warrant thereof, the deed, instrument, or writing constituting the said real burden; but it shall be sufficient to produce to him, and to specify shortly in such notarial instrument, the deed, instrument, or writing, or the deeds, instruments, or writings whereby the said real burden shall have been assigned, conveyed, or transferred, and which, or one or more of which, if there are more than one, shall have entered the appropriate register of sasines (*m*).

(*a*) The object of this section is to assimilate real burdens to other heritable securities, in so far as regards the mode in which they may be transferred or discharged, and also to remove doubts as to whether the provisions of the Consolidation Act, rendering heritable securities moveable as regards the succession of the creditor therein, were applicable to securities by way of real burden. The section does not deal with the *constitution* of real burdens, which is peculiar in this respect, that the title of the creditor is completed, not by his own infetment, but by the debtor's infetment, upon which the creditor's right is imposed by way of qualification.

(*b*) With warrant of registration endorsed thereon; see section 33, *post*.

(*e*) Viz., 1st October 1874.

(*d*) Prior to the commencement of the Act real burdens were not transferred, like other heritable securities, by conveyance followed by infetment, but by assignation intimated to the debtor. Assignations of real burdens were frequently recorded in the register of sasines; but this was useless, intimation to the debtor being the only competent mode of completing the title, and in cases of competition all questions of preference depending upon priority of intimation. Now, the preference is made to depend upon the date of recording; but in

any question between the debtor and the creditor, intimation is still sufficient.

(e) This provision renders applicable to real burdens section 124 of the Consolidation Act, and the schedules therein mentioned, *ante*, p. 241 *et seq.*

(f) This provision renders applicable to real burdens sections 132 and 133 of the Consolidation Act, and the schedules therein mentioned, *ante*, p. 258 *et seq.*

(g) This provision renders applicable to real burdens sections 125 to 130, both inclusive, of the Consolidation Act, and the schedules therein mentioned, *ante*, p. 245 *et seq.*; sections 125, 127, and 129 being, however, read as amended by sections 63, 64, and 65 of the Conveyancing Act.

(h) Viz., the forms contained in the schedules referred to in the sections specified in notes (e) (f) and (g) *supra*.

(i) Viz., the section rendering heritable securities moveable as regards the succession of the creditor therein.

(k) The reason why ground-annuities still continue heritable as regards succession is, that they are generally constituted in place of feu-duties, where subinfeudation is prohibited.

(l) This clause is not very accurately worded, as a real burden cannot, strictly speaking, be assigned, conveyed, or transferred by a notarial instrument. But the meaning seems sufficiently obvious, viz., to give the same effect to a recorded instrument following upon an assignation as to a recorded assignation. As, however, doubts have been expressed as to the true construction of the clause, the safest course is to produce to the notary public the deed constituting the real burden, unless a proper assignation or deed of transmission of the real burden has already been recorded; see Mowbray's Hendry's Styles, p. 305.

(m) The object of this clause is to provide for the usual case of the deed which constitutes the real burden being the conveyance in favour of the debtor, and so not in the hands of the creditor who desires to complete his title by means of a notarial instrument.

In every case the notarial instrument must set forth every deed and instrument by which the real burden has been transmitted from the original creditor to the person expeding the instrument.

31. *A general service to be equivalent to a general disposition (a).*—When a proprietor has died or shall have died infert in the lands (b), and the heir of the

investiture (*c*) has expedie or shall have expedie a general service as heir of such proprietor, the decree of general service in favour of such heir shall be equivalent to a *mortis causa* general disposition of the lands by such proprietor in favour of such heir, to the effect of enabling such heir, or those deriving right from or by succession to him, to expedie and record in the appropriate register of sasines all notarial instruments applicable to such lands which a general disponent or those deriving right from him may expedie and record under or in terms of "The Titles to Land Consolidation (Scotland) Act, 1868" (*d*), or of this Act (*e*), and that notwithstanding that such proprietor may have died in nonage or been of insane mind, or laboured under any other disability whatever (*f*); provided always, that no general service shall have such effect in any case where the heir so served shall have died before the commencement of this Act (*g*); and a general service expedie by the heir of any person so served, and dying after the commencement of this Act, or by any of the successive heirs of the investiture (*c*), or by the heir of any general disponent, shall have the like effect as a transmission of the right to the lands; and any such services shall be sufficient links in the series of titles for the connection of the person expeding such instrument with the person last infeft, in the same manner as is herein-before (*h*) provided with reference to two or more general dispositions forming links in such series (*i*).

(*a*) The object of this section is to render a decree of general service to an ancestor who died infeft in lands equivalent, in so far as regards the making up of a title, to a *mortis causa* general disposition of the lands by the ancestor in favour of the heir so served. It may be explained that a general service, though not usually appropriate to the case of the ancestor being infeft, was resorted to for the purpose of obtaining a Crown charter where the lands were held of the Crown. But by the law prior to the commencement of the Act, in the event of an heir who had obtained such decree dying uninfeft, the decree was no better than waste paper. As charters by progress are now abolished, advantage of this section will probably be taken chiefly for the purpose of supplying the connecting links required to be set forth in notarial instruments. Where, however, there inter-

venes in the series of transmissions an heir without a service or a conveyance in his favour, the title must be made up under section 10 of this Act.

(b) The word "lands" includes all subjects of heritable property, whether held feu or burgage ; see interpretation clause (section 3, paragraph 1), *ante*, p. 301.

(c) That is to say, the heir who is entitled to succeed under the destination contained in the titles.

(d) *Viz.*, under section 19 of the Consolidation Act ; *ante*, p 59.

(e) *Viz.*, under sections 29, 46, 51, 53, and 64.

(f) That is to say, the decree of general service is assimilated to a general disposition by a person under no incapacity to grant such a deed.

(g) *Viz.*, 1st October 1874. The section has retrospective effect, provided the heir was alive at that date.

(h) *Viz.*, in section 29, *ante*, p. 365.

(i) A notarial instrument may thus be expedite connecting the person making up the title with the person last infeft, whatever number of general services or dispositions may intervene, provided there is no break in the series. But where there are no intervening dispositions, and the person making up the title is the direct heir of the person last infeft, he may still pass over intervening heirs with general services, and serve himself heir in special of the person last infeft.

32. *Reservations, conditions, and covenants affecting lands may be imported by reference (a).*—Reservations, real burdens, conditions, provisions, limitations, obligations, and stipulations affecting land (b) may be validly and effectually imported into any deed, instrument, or writing relating to such lands by reference to a deed, instrument, or writing applicable to such lands, or to the estate of which such lands form a part, recorded in the appropriate register of sasines, and in which such reservations, real burdens, conditions, provisions, limitations, obligations, and stipulations are set forth at full

length, and a reference in the form set forth in Schedule H. hereto annexed, or in a similar form (c), shall be sufficient. And it shall be lawful for any proprietor of lands (b) to execute a deed, instrument, or writing, setting forth the reservations, real burdens, conditions, provisions, limitations, obligations, and stipulations under which he is to feu or otherwise deal with or affect his lands, or any part thereof, and to record the same in the appropriate register of sasines; and the same being so recorded, such reservations, real burdens, conditions, provisions, limitations, obligations, and stipulations may be effectually imported in whole or in part by reference into any deed or conveyance (d) relating to such lands subsequently granted by such proprietor, or by his heir or successor, or by any person whatsoever, provided it is expressly stated in such deed or conveyance that it is granted under the reservations, real burdens, conditions, provisions, limitations, obligations, and stipulations set forth in such deed, instrument, or writing.

(a) The object of this section is to provide a short form by which reservations, real burdens, &c., may be validly referred to, as set forth at full length in a recorded deed or instrument. A similar form of reference was provided by section 10 of the Consolidation Act, and that form may still be used in conveyances. The present section, however, for the first time authorises reservations, &c., to be referred to in feu charters or other original grants, the proprietor recording a deed setting forth the conditions under which he is to feu the lands therein specified.

(b) The word "land" includes all subjects of heritable property, whether held feu or burgage; see interpretation clause (section 3, paragraph 1), *ante*, p. 301.

(c) Notwithstanding the latitude here given, it will be well to adhere to the form provided in the schedule, so as to avoid any question as to the degree of similarity required.

(d) As to the writings included in the terms "deed" and "conveyance," see interpretation clause (section 3, paragraph 4), *ante*, p. 302.

SCHEDULE H.

FORM OF REFERENCE TO A DEED, INSTRUMENT, OR WRITING FOR RESERVATIONS, BURDENS, AND CONDITIONS AFFECTING LANDS.

(a) The reservations, real burdens, conditions, provisions, limitations, obligations, and stipulations [or as the case may be] specified (b) in [refer to the deed, instrument, or writing in such terms as shall be sufficient to identify it, and specify the register in which it is recorded, and the date of registration (c), or where the deed, instrument, or writing referred to is recorded on the same date as the deed, instrument, or writing containing the reference, here say, recorded of even date with the recording of these presents].

Page 372, section 33.

The whole of this section is included in the schedule of enactments repealed by the Statute Law Revision Act 1883 (46 and 47 Vict. c. 39). It is, however, provided by one of the clauses of that Act that "Where any enactment not comprised in the schedule has been repealed . . . by any enactment hereby repealed, such repeal . . . shall not be affected by the repeal effected by this Act." The result seems to be that the proviso contained in section 141 of the Titles to Land Consolidation Act still stands repealed. The whole of the present section of the Conveyancing Act being however repealed as above mentioned by the Statute Law Revision Act, the concluding sentence must be held as deleted. But as that sentence seems to have been superfluous, the Statute Law Revision Act has apparently not made any actual alteration on the law.

(a) This clause of reference requires to be introduced with some such words as "but always with and under."

(b) The reference must be to a deed, instrument, or writing in which the reservations, &c., are set forth at full length, not to one in which they are merely referred to.

(c) Even where the deed, instrument, or writing has been previously mentioned, and the date of recording specified, it is expedient to repeat the particulars here required.

33. *All writs before being recorded to have warrants of registration (a).*—The following proviso contained in section 141 of "The Titles to Land Consolidation (Scotland) Act, 1868" (b), viz., "Provided always, that "nothing herein contained shall render it necessary to "have a warrant of registration indorsed or written "upon any conveyance, deed, or writing of or relating "to lands held by burgage tenure, which, according to "the existing law and practice, may be recorded in "any burgh register without such warrant" (c), shall be, and the same is hereby, repealed; and the remainder of the said section shall apply to all conveyances and deeds, and all writings whatsoever, which may be recorded in any register of sasines (d).

(a) The object of this section is to abolish a few exceptions allowed by the Consolidation Act to the rule that every deed or instrument must have a warrant of registration endorsed upon it before it can be recorded in any register of sasines.

(b) *Ante*, p. 267.

(c) As to the deeds which might formerly be recorded in a burgh register without a warrant of registration, see note (l) to section 141 of the Consolidation Act, *ante*, p. 270.

(d) The result is, that every deed, writ, or instrument, including even the instrument of sasine, must have a warrant of registration endorsed thereon before it can be competently recorded in any register of sasines.

34. Title and period of prescription (a).—Any ex facie valid irredeemable title (b) to an estate in land (c) recorded in the appropriate register of sasines shall be sufficient foundation for prescription, and possession following on such recorded title for the space of twenty years continually and together, and that peaceably, without any lawful interruption made during the said space of twenty years, shall, for all the purposes of the Act of the Parliament of Scotland, 1617, c. 12, “Anent prescription of heritable rights,” be equivalent to possession for forty years by virtue of heritable infeftments for which charters and instruments of sasine or other sufficient titles are shown and produced, according to the provisions of the said Act (d); and if such possession as aforesaid following on an ex facie valid irredeemable title recorded as aforesaid shall have continued for the space of thirty years no deduction or allowance shall be made on account of the years of minority or less age of those against whom the prescription is used and objected, or of any period during which any person against whom prescription is used or objected was under legal disability (e). This enactment shall have no application to, and shall not be construed so as to alter or affect, the existing law relating to the character or period of the possession, use, or enjoyment necessary to constitute or prove the

existence of any servitude or of any public right of way or other public right (*f*), and shall not be pleadable to any effect in any action in dependence at the commencement of this Act, or which shall be commenced prior to the 1st day of January 1879 (*g*): Provided always, that the possession for any space of time prior to the 1st day of January 1879 shall not have effect for the purposes of this section unless such space of time immediately preceded and was continuous up to the said 1st day of January (*h*).

(*a*) The object of this section is to shorten the period of prescription introduced by the Act 1617, c. 12, as to land rights, and to enlarge the description of title upon which prescription may be grounded.

(*b*) Under the Act of 1617 there was required in all cases an instrument of sasine recorded at least forty years before prescription was pleaded. The disuse of the instrument of sasine in modern conveyancing necessitated the present enactment. Any recorded title, such as a notarial instrument or a conveyance with warrant of registration, is now sufficient, provided it be *ex facie* valid and irredeemable. A conveyance is *ex facie* valid if it is probative according to the law in force at the date of its execution, and if it contains nothing to show that the granter was not entitled to convey the property.

(*c*) In the interpretation clause (section 3, paragraph 2, *ante*, p. 301) the words "estate in land" are declared to mean "any interest in land, whether in fee, liferent, or security, and whether beneficial or in trust, or any real burden on land, and shall include an estate of superiority." The use of the word "irredeemable" in the present enactment will, however, prevent an *ex facie* security title being converted by prescriptive possession into a title of absolute property.

(*d*) The provisions referred to are the following:—"That whoever His Majestie's lieges, their predecessors and authors, have brooked heretofore, or shall happen to brook in time comming, by themselves, their tennents, and others having their rights, their lands, barronies, annuelrents, and other heritages, by vertue of their heritable infeftments, made to them by His Majestie, or others their superiours and authors, for the space of fourty yeares, continually and together, following and insuing the date of their saids infeftments, and that peaceably, without any lawful interruption made to them therein during the said space of fourty yeares, that such persons, their heirs and successours, shall never be troubled,

Page 374, end of note (*c*).

Thus a decree of adjudication for debt is not sufficient to found prescription under the present enactment.—*Hinton and Others v. Connell's Trustees*, July 6, 1883, 20 Scot. Law Rep. 731.

"persued, nor inquieted, in the heritable right and property of their saids lands and heritages foresaids, by His Majesty, or others, their superiours and authors, their heirs and successours, nor by any other person, pretending right to the same, by vertue of prior infeftments, publicke or private, nor upon no other ground, reason, or argument competent of law, except for falsehood: Providing they be able to shew and produce a charter of the saids lands, and others foresaid, granted to them, or their predecessours, by their saids superiours and authors, preceeding the entry of the saids forty yeares possession, with the instrument of seasing following thereupon; or where there is no charter extant, that they shew and produce instruments of seasing, one or moe, continued and standing together for the said space of forty yeares, either proceeding upon retours, or upon precepts of *clare constat*. Which rights His Majesty, with advice and consent of the Estates foresaids, findes and declares to be good, valide, and sufficient rights (being claid with the said peaceable and continual possession of forty yeares) without any lawful interruption, as said is: for brooking of the heritable right of the same lands, and others foresaid."

Though the main object of the Act 1617, c. 12, was to introduce the positive prescription in the manner above stated, one clause of it also extended the negative prescription by providing that "all actions competent of the law upon heritable bands, reversions, contracts, or others whatsoever, either already made or to be made after the date hereof, shall be pursued within the space of forty years after the date of the same, except the saids reversions be incorporate within the body of the infeftments," &c. This clause is, however, not affected by the present section of the Conveyancing Act, which shortens only the positive prescription. Many difficulties will, it is feared, arise from the fact that the negative prescription is now longer than the positive.

(e) One clause of the Act 1617, c. 12, provided that the years of minority and less age should not be counted, and this clause was held to apply to the positive as well as the negative prescription, so that the running of prescription was suspended during the minority of the person or persons entitled to the property. The uncertainty thus arising as to the actual length of time required to fortify titles in particular cases has been reduced by the present enactment, which fixes thirty years as the maximum period in any case.

(f) So that in these cases possession for forty years is still requisite.

(g) This is the only section the operation of which has been postponed beyond the date of the commencement of the Act. It was obviously proper to allow a reasonable time within which parties might take action to vindicate rights subsisting under the previous law.

(h) "This proviso, which is exactly in terms of the previously

Page 375, end of note (d).

Twenty years possession is now sufficient, not only to secure an owner against any one alleging a better title, but also to determine the extent of an estate, where a question arises either as to what is comprehended under a description or as to whether a specific piece of property has been carried under a clause of parts and pertinents.—*Buchanan and Geils v. Lord Advocate*, 20th July 1882, 9 R. 1218. Searches in the Register of Sasines still require to be ordered for periods of forty years in order to discover bonds and other incumbrances which have not yet suffered the negative prescription. No extent of search, however, will necessarily disclose close bonds kept alive by payment of interest thereon. As regards the personal registers, however, it seems now unnecessary to make a search against any former proprietor whose title is beyond the short prescriptive period introduced by the present section. Thus the Register of Adjudications requires to be searched only against such persons as have been proprietors within that period beginning, however, in each case forty years prior to the date of the search, and ending as against each former proprietor at the date of the infeftment of his successor.

Page 374, end of note (g). The words between (f) and (g) having been rendered obsolete by the lapse of time, have been repeated by the Statute Law Revision Act 1893 (46 and 47 Vic. c. 39).

existing law as regards land rights, is understood to have reference to leases of salmon-fishings under the Crown, there being an opinion entertained that parties who have been possessing and paying rent under such leases, and so recognising the right of the Crown as proprietor, may abandon such limited title of possession, and revert to alleged possession during a previous period on a title of property."—Mowbray's Analysis of the Conveyancing Act, p. 95.

35. Registration of a decree of division (a).—A decree of division of commonalty or of common property or runrig lands, whether pronounced by a court of law, or by arbiters or by an oversman, shall have the effect of a conveyance containing assignations of writs by all the joint proprietors (b) in favour of the several parties participating in the division of the shares severally allotted to them, and the extract decree pronounced by the court, or the decree pronounced by the arbiters or oversman, or an extract thereof from any competent court books, may be recorded in the appropriate register of sasines in ordinary form on behalf of all or any of the parties, or may be used by all or any of the parties for the purpose of infeftment in, or of acquiring a personal right to the shares severally allotted to them, or to any portion thereof, as an assignation, or one of a series of assignations, of an unrecorded conveyance or of a personal right under this Act (c).

(a) The object of this section is to simplify the mode by which a decree of division of common property, &c., may be carried into effect, and infeftment taken by any of the proprietors. It was previously necessary for the whole joint proprietors to grant conveyances in favour of each other of the shares severally allotted to them. The decree, whether pronounced by a court of law or by arbiters, is now made equivalent to such conveyances.

(b) That is to say, shall have the effect of a conveyance by all the joint proprietors, with a clause of assignation of writs in the usual form.

(c) A distinction is here drawn, which must be attended to in making up titles. Where all the joint proprietors are infeft, the decree is equivalent to a conveyance by an infeft proprietor, and

accordingly infeftment may be taken thereon by merely recording the decree with a warrant of registration in favour of the party or parties who desire to be infeft. But if any of the joint proprietors is not infeft in his *pro indiviso* share, the decree is *quoad* him equivalent merely to such a conveyance as may competently be granted by a proprietor not infeft—that is to say, to an assignation of an unrecorded conveyance or of a personal right under section 9 of this Act, as the case may be. As to the mode of making up titles in these cases, see *ante*, pp. 76 and 333.

36. Effect of decree of sale of glebe (a).—A decree of sale obtained in terms of section 17 of “The Glebe Lands (Scotland) Act, 1866,” shall have the effect of a conveyance by the minister of the parish at the sight of the heritors of the parish and of the presbytery of the bounds, to the heritor in whose favour it is pronounced, and his heirs and assignees whomsoever, of the glebe or portion of glebe therein contained; and, on an extract of such decree being recorded (*b*) in the appropriate register of sasines, shall vest in such heritor the glebe or portion of the glebe described therein, with a holding of the Crown for payment of a penny Scots yearly, if asked only (*c*), as fully and completely as if he had obtained a charter from the Crown by virtue of such decree, and been infeft thereon in common form.

(*a*) The object of this section is to simplify the mode by which a title may be made up to lands contained in a decree of sale obtained in terms of 29 and 30 Vict. c. 71, sec. 17, printed *post*. That enactment provided that when authority had been granted by the Court to feu or lease glebe lands, any proprietor whose lands were *contiguous* with the glebe should have a right of pre-emption, and the Court should pronounce a decree of sale in his favour. To complete a title, however, the party with the decree was obliged to obtain a charter from the Crown, and take infeftment thereon. The abolition of charters by progress, effected by section 4 of the present Act, rendered it necessary that a new mode of completing the title should be provided; and this is done by the present section, which renders the decree equivalent to a conveyance *a domino*.

(*b*) With warrant of registration thereon; see section 33, *ante*, p. 372.

(*c*) That is to say, such a *blench* holding as the section of the

Glebe Act above referred to declared should be inserted in the Crown charter for which the decree was the warrant.

37. *Distinction between heritage and conquest abolished (a).*—The distinction between fees of heritage and fees of conquest is hereby abolished with respect to all successions opening after the commencement of this Act (*b*), and fees of conquest shall descend to the same persons, in the same manner and subject to the same rules as fees of heritage.

(*a*) The object of this section is to abolish the succession of heirs of conquest as distinguished from heirs of line. Where a middle brother or sister, or his or her issue, died intestate and without issue, a distinction was drawn between lands to which the deceased had succeeded as heir and those conquered or acquired, whether by purchase or by gratuitous disposition, from one to whom he or she would not by law have succeeded. While the former went to the immediate younger brother or his issue, the latter went to the immediate elder brother or his issue, &c.; see M'Laren on Wills and Succession, vol. i., pp. 69 and 74. This peculiarity is now abolished as regards the succession of persons who died since the commencement of the Act, the heir of line succeeding to the whole heritable estate however acquired.

(*b*) Viz., 1st October 1874.

38. *Certain rules as to probative deeds altered (a).*—It shall be no objection to the probative character of a deed, instrument, or writing (*b*), whether relating to land or not (*c*), that the writer or printer (*d*) is not named or designed, or that the number of pages is not specified, or that the witnesses are not named or designed in the body of such deed, instrument, or writing, or in the testing clause thereof, provided that where the witnesses are not so named and designed their designations shall be appended to or follow their subscriptions (*e*); and such designations may be so appended or added at any time before the deed, instrument, or writing shall have been recorded in any register for preservation, or shall have been founded

on in any court, and need not be written by the witnesses themselves (*f*).

(*a*) The object of this important section is to relax the strictness of our law with reference to the execution and authentication of deeds, by rendering no longer essential to the probative character of a deed most of the formalities required by the old Scotch Acts on the subject. The reform is carried still farther by section 39, which provides a mode by which any document bearing to be attested by two witnesses subscribing may be set up so as to receive the same effect as a probative deed.

It has been decided, upon grounds equally applicable to the present section, that section 39 is not retrospective—*Gardner v. Lucas*, 8th February 1878, 5 Rettie 638, affirmed 21st March 1878, 5 Rettie (H.L.) 105. It may therefore be considered as settled that the present section does not apply to deeds executed prior to 1st October 1874.

In order to render a deed probative under the present section, it is still essential—

(1) That the deed be subscribed by the granter, at the end, and also, if it is written on more than one sheet, at the foot of each page.

(2) That the deed be subscribed on the last page by two witnesses who either see the granter subscribe or hear him acknowledge his signature. As to the subscription of witnesses *ex intervallo*, see *Stewart v. Burns*, 1st February 1877, 4 Rettie 427. The witnesses, whether male or female, must be at least fourteen years old, and subject to no legal incapacity. No one can act as witness to a deed in favour of himself or to which he is a party.

(3) That the designation of the witnesses be set forth in the deed (the testing clause, in which they are usually inserted, being considered part of the deed) or be appended to or follow the respective subscriptions of the witnesses.

Any marginal additions, interlineations, deletions, or erasures must be authenticated in the same way as formerly.

(Holograph deeds do not require to be attested by witnesses; but, except in the case of testamentary writings, there is no presumption that they were executed on the date they bear. Crown writs are privileged as regards attestation and authentication; see *Catton v. Mackenzie*, 11th February 1874, 1 Rettie 488.)

As the present section merely renders the insertion of certain particulars in the testing clause no longer essential to the probative character of a deed, and does not in any way prevent their enumeration, the old form of testing clause is still in general use, and it is recommended as the best mode of preserving information which may be useful in the event of the deed being challenged.

(*b*) By the interpretation clause (section 3, paragraph 4, *ante*, p. 302) the words “deed” and “instrument” are declared to include

Page 379, note

(*a*), end of (*2*).

It is not *per se* a disqualification to a witness to a testamentary deed that he has a beneficial interest under the deed. — *Simson and Others*, 19th July 1882, 20 Scot. Law Rep. 831. As to what amounts to a sufficient acknowledgment of a signature, see *Cumming v. Skeoch's Trs.*, 31st May 1879, 6 R. 963.

a great variety of deeds; but the use of the additional word "writing" renders the present section applicable to every species of document.

(c) The words "whether relating to land or not" have been inserted for the purpose of rendering it clear that although the Act deals chiefly with land rights, the present section is applicable to all documents whatever.

(d) As to deeds partly printed, see section 149 of the Consolidation Act, *ante*, p. 227.

(e) This clause renders the English form of attestation sufficient for Scotch deeds.

Where it is intended to take advantage of this provision and to dispense with a testing clause, all that is required, where the deed is granted by only one person, is that the designations of the witnesses should be appended to their signatures. But where the deed is granted by several parties, it should be made apparent which signatures are witnessed by which witnesses. This may be done either by the adoption of the English form of docquet ("Signed by the said *A.B.*, in presence of," &c.), or by each witness adding after his designation the words "witness to the signature of" so and so.

(f) The appending of the witnesses' designations is here made equivalent to the filling up of the testing clause, as to which see the recent cases of *Hill v. Arthur*, 6th Dec. 1870, 9 Macph. 223; *Feasey v. Malcolm's Trs.*, 2d June 1875, 2 Rettie 748; and *Millar v. Birrell*, 8th Nov. 1876, 4 Rettie 87.

Where the deed has been recorded for preservation or founded on in any Court, without the designations of the witnesses having been previously set forth or appended, the remedy provided by section 39 is competent; *Thomson's Trs. v. Easson*, 2d November 1878, 16 Scot. Law Rep. 67.

39. *Deed not to be invalid because improbable* (a).—No deed, instrument, or writing (b) subscribed by the granter or maker thereof, and bearing to be attested by two witnesses subscribing, and whether relating to land or not (c), shall be deemed invalid or denied effect according to its legal import because of any informality of execution (d), but the burden of proving that such deed, instrument, or writing so attested was subscribed by the granter or maker thereof, and by the witnesses by whom such deed, instrument, or writing bears to be attested, shall lie upon the party using or upholding the same (e), and such proof may be led in any action or proceeding in which

such deed, instrument, or writing is founded on or objected to (*f*), or in a special application to the Court of Session (*g*), or to the sheriff within whose jurisdiction the defender in any such application resides, to have it declared that such deed, instrument, or writing was subscribed by such granter or maker and witnesses (*h*).

(*a*) The object of this important section is to render valid every deed subscribed by the granter and attested by two witnesses subscribing, notwithstanding any informality of execution, the *onus* of proving that the deed was subscribed by the granter and witnesses being, however, thrown upon the party using or upholding the deed. Under the previous law a deed which was not wholly probative was entirely ineffectual, unless validated by homologation or *rei interventus*. The formalities essential to the probative character of a deed having been reduced to a minimum by section 38 of this Act, the present section appears intended to render unessential to the validity of a deed any other formalities remaining except the subscriptions of the granter and two witnesses.

It has been decided that this section is not retrospective, so that it is not applicable to deeds executed prior to 1st October 1874; *Gardner v. Lucas*, 8th February 1878, 5 Rettie 638, affirmed 21st March 1878, 5 Rettie (H.L.) 105.

(*b*) By the interpretation clause (section 3, paragraph 4, *ante*, p. 302) the words "deed" and "instrument" are declared to include a great variety of deeds; but the use of the additional word "writing" renders the present section applicable to every species of document.

(*c*) The words "whether relating to land or not" have been inserted for the purpose of rendering it clear that although the Act deals chiefly with land rights, the present section is applicable to all documents whatever.

(*d*) Some difficulty has been felt as to the character of the "informality of execution" intended to be covered by this section, seeing that section 38 sweeps away every formality except the subscriptions of the granter and two witnesses (both of which formalities are required by the present section also), and the statement of the witnesses' designations, which may be given in the testing clause, or appended to the subscriptions at any time before the deed is recorded or founded on in Court.

In the first case under this provision—*Addison and Others*, 23d Feb. 1875, 2 Rettie 457—a person having died, leaving a trust disposition bearing to be subscribed by himself and two witnesses, his widow and daughters presented a petition stating that the testing clause was not filled up, that the precise date of signing was not known to the petitioners, and that the names of the trustees as originally written were deleted and others substituted in the testator's

own handwriting. The petitioners stated that it was doubtful on the authorities whether the testing clause could be filled up after the testator's death. The Court allowed a proof, and thereafter found and declared that the trust-disposition was subscribed by the deceased and the witnesses. The Lord President, in whose opinion the other judges concurred, observed—"The condition of the deed, apart from the difficulty about the names of the trustees, is that the testing clause has not been filled up. Whether that case was immediately within the contemplation of the framers of the statute I do not know, but it certainly falls within the meaning of the words of the clause, provided the testing clause cannot now be filled up. If the position of the case had been merely that the testing clause had not been filled up, I am not sure whether it would have fallen within the scope of the statute. But I think there is sufficient doubt whether the testing clause could be filled up to induce us to apply the enactment."

In the next case—*Smyth v. Smyth*, 9th March 1876, 3 Rettie 573—it was held by Lord Curriehill and the Second Division that this section did not validate a deed where the signatures of the witnesses bearing to attest the subscription of the granter were adhibited before the subscription of the granter, and where the so-called witnesses neither saw the granter sign nor heard him acknowledge his subscription. It is thus not sufficient for the party upholding the deed to prove that the granter and the persons bearing to be witnesses actually adhibited their signatures; he must also establish the fact that these persons did truly witness the signature of the granter. Hence also it follows that the persons by whom the deed bears to be attested must have been properly qualified to act as witnesses.

Page 382, end of
not (d).

In the case of *Tener's Trs. v. Tener's Trs.*, 28th June 1879, 6 R. III, it was held by the Second Division that the present section was applicable where one of the attesting witnesses had not subscribed as such at the time, but had adhibited his signature two months thereafter, and after the death of the granter.

In the case of *Browne and Others*, Nov. 4, 1882, 20 Scot. Law Rep. 76, the Second Division granted the prayer of a petition presented under this section of the Conveyancing Act, although of opinion that the deed in question required no such process to set it up, on the ground that the petition-

In the case of *M'Laren v. Menzies*, 20th July 1876, 3 Rettie 1151, it was held by four out of seven judges that the present section was applicable to a deed consisting of two sheets stitched together and subscribed by the granter as well as the witnesses (who were not designed) on the last page only. The minority were of opinion that in order to render the section applicable each separate or separable sheet required to be authenticated by the subscription of the granter; but the question must now be regarded as settled in accordance with the opinion of the majority.

In the case of *Thomson's Trs. v. Easson*, 2d November 1878, 16 Scot. Law Rep. 67, it was held by the Second Division that the present section was applicable to a testamentary writing, bearing to be signed by the granter and two witnesses, which had been recorded in the Commissary Court Books, and founded on in various actions against the granter's debtors.

(e) In the case of *M'Laren v. Menzies*, referred to in note (d) *supra*, Lord Deas (who was one of the judges in the majority) observed—"I do not think the proof competent and requisite under the statute was intended to be limited to the bare fact that the subscriptions are genuine. On the contrary, I think that the surrounding facts and circumstances attending the subscriptions both of the granter and witnesses—everything, in fact, tending to satisfy the

mind of the Court that the deed was intelligently and deliberately subscribed when in the state in which it appears when submitted to the Court,—may be and ought to be elicited in the proof.”

(f) As in the case of *Smyth v. Smyth*, referred to in note (d) *supra*.

(g) As in the cases of *Addison* and *M'Laren v. Menzies*, referred to in note (d) *supra*.

The petition should pray for intimation on the walls and in the minute book in common form, for service on such persons *nominatim* as may be supposed to have an adverse interest, for a proof of the averments contained in the petition, and that the Court should find and declare that the deed was subscribed by the alleged granter as maker thereof, and by the alleged witnesses as witnesses attesting his subscription.

(h) In the case of *Addison*, referred to in note (d) *supra*, the petitioners prayed the Court to declare further that the deed was a valid deed, and entitled to effect according to its legal import; but the Court ordered the petition to be amended by the deletion of this part of the prayer.

40. Holograph testamentary writings (a).—Every holograph writing of a testamentary character shall, in the absence of evidence to the contrary, be deemed to have been executed or made of the date it bears.

(a) The object of this section is to abolish, in the case of testamentary writings, the rule that holograph deeds do not prove their own dates. The date will obviously be of essential importance to a holograph testament in the event of another testament being in existence, or in the event of the supervening insanity of the testator. The section merely establishes a presumption which may be rebutted or supported by proof *prout de jure*.

41. One notary or justice of the peace and two witnesses to be sufficient where party cannot write (a).—Without prejudice to the present law and practice (b), any deed, instrument, or writing (c), whether relating to land or not (d), may, after having been read over to the granter, be validly executed on behalf of such granter (e), who, from any cause (f), whether permanent or temporary, is unable to write, by one notary public or justice of the peace (g) subscribing the same for him in his presence and by his authority, without the ceremony of touching the pen (h), all

ers being trustees were entitled to act with extreme caution. The deed was a trust-disposition and settlement by a person domiciled in New Zealand, possessed of heritage in Scotland, and it was properly authenticated according to the law of New Zealand. See the case of *Counell's Trs. v. Counell, ante*, p. 66, note (f).

In another case under this section the petitioners moved the Court to authorise a Sheriff-Clerk to deliver to the petitioners or their agent a will recorded in his Sheriff-Court Books, to enable them to exhibit it to one of the instrumentary witnesses resident in India, who was to be examined on commission. The Court granted the motion, on the petitioners finding caution for the return of the deed *quam primum*; an extract being previously lodged in its stead. — *Garrett and Another*, 10th July 1883, 20 Scot. Law Rep. 756.

before two witnesses (*i*), and the docquet (*k*) thereto shall set forth that the granter of the deed authorised the execution thereof, and that the same had been read over to him in presence of the witnesses (*l*). Such docquet may be in the form set forth in Schedule I. hereto annexed, or in any words to the like effect (*m*).

(*a*) The object of this section is to relax the strictness of the law relating to the notarial execution of deeds by parties unable to write. Under the previous law and practice, such deeds, with few exceptions, required to be subscribed with some ceremony by two notaries in presence of four witnesses. The present section, while permitting the former practice to be continued, enables any person who cannot write to execute any deed by means of one notary public, or justice of the peace, in presence of two witnesses.

(*b*) As to the law and practice here referred to, see Bell's *Lectures on Conveyancing*, 1st edition, p. 38.

(*c*) By the interpretation clause (section 3, paragraph 4, *ante*, p. 302) the words "deed" and "instrument" are declared to include a great variety of deeds; but the use of the additional word "writing" renders the present section applicable to every species of document.

(*d*) The words "whether relating to land or not" have been inserted for the purpose of rendering it clear that although the Act deals chiefly with land rights, the present section is applicable to all documents whatever.

As regards bills, it is thought that a bill subscribed by one notary or justice of the peace in presence of two witnesses, under this section, would now be a sufficient warrant for summary diligence.

(*e*) If there are two or more granters of the deed who cannot write, and if they have antagonistic interests, the same notary or justice of the peace should not act for more than one. In the case of *Graeme v. Graeme's Trustees*, 21st October 1868, 7 Macph. 14, the objection was repelled that the same notaries had subscribed for each of the two parties to a mutual settlement; but the parties there had no antagonistic interests in the matter, as the settlement bore to be revocable by either.

(*f*) Such as, never having been taught to write, blindness, sickness, bodily weakness, or infirmity.

(*g*) The Established Church minister of a parish is also entitled to officiate as a notary in the execution of the testament of any person dwelling in his parish, and the schedule of docquet here given is adapted to this case.

The notary public, justice of the peace, or minister, as the case may be, must have no interest in the deed, and ought to know the granter personally or to have the granter's identity previously certified.

(h) It was previously matter of consuetudinary law that the granter should touch the notary's pen in token of giving his authority.

(i) The witnesses attest, not merely the subscription of the notary or justice of the peace, but also the giving of authority. They ought to see him subscribe (and not merely acknowledge his signature) and adhibit their own subscriptions at the same time.

(k) The docquet must be holograph, that is to say, in the handwriting of the notary or justice of the peace; *Henry v. Reid*, 10th February 1871, 9 Macph. 503.

(l) Under the old system it was the uniform practice, but not essential, for the docquet to state that the deed had been read over.

(m) In the case of *Aitchison's Trustees v. Aitchison*, 21st January 1876, 3 Rettie 388, it was held that as the present section does not positively prescribe the use of the form in the schedule, but merely suggests it as a good practical form, a docquet in the following terms was not rendered invalid by its being disconform to the schedule:—
 “The foregoing disposition and deed of settlement having been read over and explained by me, the undersigned notary public, to the above designed A.B., in presence of the witnesses also above designed, and she having approved thereof in every respect, and stated that she was unable to subscribe the same from weakness, and having desired me to sign for her, and in token of her request touched my pen, I do hereby subscribe the same for her in presence of the said witnesses”—followed by the subscriptions of the notary and witnesses in proper form.

When a deed is executed notarially, the testing clause is filled up in the same terms as if the deed had been subscribed by the granter himself. Under section 38 of this Act, however, the only particulars that are now essential are the designations of the witnesses, and these may be appended to the witnesses' subscriptions.

SCHEDULE I.

FORM OF DOCQUET (a) WHERE GRANTER OF DEED CANNOT WRITE.

By authority of the above-named and designed A.B., who declares that he cannot write, on account of sickness and bodily weakness [*or* never having been

taught, or otherwise as the case may be], I *C.D.* [*design him*], notary public [or justice of peace for the county of (*name it*), or as regards wills or other testamentary writings executed by a parish minister as notary public in his own parish (*b*), minister of the parish of (*name it*)], subscribe these presents for him, he having authorised me for that purpose, and the same having been previously read over to him, all in presence of the witnesses before (*c*) named and designed, who subscribe this docquet in testimony of their having heard [or seen] authority given to me as aforesaid, and heard these presents read over to the said *A.B.*

	(Signed)	<i>A.B.</i> , Notary Public [or
<i>E.F.</i> , witness.		Justice of the Peace, or
<i>G.H.</i> , witness.		Parish Minister].

(a) This docquet requires to be holograph; see note (*k*) *supra*.

(b) See note (*g*) *supra*.

(c) Viz., in the testing clause.

42. *Inhibitions to prescribe in five years.*—But may be registered anew (*a*).—All inhibitions subsisting at the commencement of this Act (*b*) shall prescribe not later than on the lapse of five years after the said date, and all inhibitions which shall be recorded after the commencement of this Act (*b*) shall prescribe on the lapse of five years from the date on which such inhibitions shall respectively take effect: Provided always, that the raisers of any such inhibitions, or their heirs or assignees, may again record the same, or a memorandum signed by them or their agents in terms of Schedule J. hereto annexed, or in a similar form (*c*), in the register of inhibitions before the expiration of the said respective periods of five years, and on such inhibitions or such memorandum being so recorded, such inhibitions shall continue in force for an additional period of five years from the date of such subsequent recording, and such inhibitions or memorandum may be again recorded, or a new memorandum

in the terms foresaid may be recorded with the like effect, before the expiration of every subsequent period of five years; provided nevertheless, that in the case of inhibitions subsisting at the commencement of this Act (b), no such inhibitions shall in any case be effectual for a longer period than they would have remained in force if this Act had not been passed.

(a) The object of this section is to reduce from forty to five years the period of prescription applicable to inhibitions, and to provide a simple mode by which they may be kept subsisting for additional periods of five years, so that searches for inhibitions may never require to extend beyond five years.

(b) Viz., 1st October 1874.

(c) As the section does not positively prescribe the form given in the schedule, a memorandum otherwise sufficient, will not be rendered invalid by disconformity to the schedule. But there can be no reason for purposely diverging from the form here given.

SCHEDULE J.

FORM OF MEMORANDUM RECORDING AN INHIBITION OF NEW.

Renew inhibition at the instance of *A.* [*here insert designation of the person in right of the inhibition*], against *B.* [*here insert designation of party inhibited*], recorded in this register [*or as the case may be*], on the day of on behalf of the said *A.* [*or if the party in right of the inhibition be an heir, assignee, &c., say*] on behalf of *C.* [*insert designation, and state shortly the title by which he has right to the inhibition*].

G.M., W.S., Edinburgh [*or as the case may be*],
Agent.

43. *Completion of title of heir of last trustee (a).—* When a sole or last surviving trustee has died or shall have died possessed of an estate in land (b) held in

Page 387, end of note (a).

A notice of litigiousity in terms of Schedule (R R) of the Consolidation Act, *ante*, p. 292, does not appear to be included under the term inhibition as employed in the present section. Such notice can, it is therefore thought, be cut down only by a prescriptive title under section 34 of the Conveyancing Act.

trust, and there shall be no contrary provision in the deed of trust, and no contrary order shall be made by the Court of Session (*c*), the heir-at-law of such trustee, being of full age and not subject to any legal incapacity, may complete a title thereto as trustee in his room in the manner provided by "The Titles to Land Consolidation (Scotland) Act, 1868," with respect to the title of any other heir (*d*), but such heir-at-law shall not, unless under the orders of the court or with the consent and approval of all the beneficiaries (being all above age and not subject to any legal incapacity), administer the trust, but, in the absence of such order or such consent and approval, shall be bound forthwith to make over the lands to any trustee or judicial factor appointed by the court for administering the purposes of the trust, or to any trustee or trustees appointed by any person who has power under the trust deed to make such appointment, or to any person or persons whom the beneficiaries, as aforesaid, may have concurred in appointing to execute the remaining purposes of the trust, or to the beneficiaries themselves if the whole trust purposes except the conveyance of the lands in terms of the trust have been or shall have been executed; and such heir-at-law shall, unless he acts as a trustee under such orders or with such consent and approval, be in no way responsible as trustee in regard to the administration of the trust, or of the lands to which he may have made up title as aforesaid.

(a) The object of this section is to enable the heir-at-law of a sole or last surviving trustee to make up a title in his own person to the heritable property belonging to the trust, where the destination in the trust-deed is limited to the trustees themselves, without any mention of heirs. Under the previous system, only a person authorised by the Court could in such circumstances make up a title. The present enactment puts the heir very much in the same position as regards the administration of the trust as he would have occupied had there been a destination to heirs; see M'Laren on Wills and Succession, vol. ii., p. 237.

Advantage will probably be taken of this section to evade payment of a casualty of composition, in cases where the completion of a title by a judicial factor would involve liability therefor. The only

other cases in which the section is likely to be of much use are where nothing remains to be done in the administration of the trust but to divide the property among the beneficiaries, or where the trust-deed confers upon the trustees under it powers beyond those generally given to judicial factors.

(b) The words "estate in land" here mean any interest in land, whether in fee, liferent, or security, or any real burden on land, and include an estate of superiority; see interpretation clause (section 3, paragraph 2), *ante*, p. 301.

(c) A contrary order would be implied by the appointment of a judicial factor.

(d) That is to say, by service, by precept or writ of *clare constat*, by writ of acknowledgment, or by notarial instrument. Section 9 of the present Act, vesting a personal right in heirs without service or other procedure, is not made applicable to the case.

44. *Provisions for the case of a person appointed by the Court to administer a trust* (a).—When a trust title (b) has been duly completed and recorded, and any person is subsequently appointed by the Court to administer the trust in whole or in part as a trustee (c), or judicial factor (d), the interlocutor whereby the appointment is made shall specify the trust-deed, and the other title or titles (if any) by which the trust title had been completed as aforesaid, in such manner as to identify the same, and shall refer to the register or registers of sasines where such deed or title or titles is or are recorded, and also set forth the lands by description or reference (e); and an extract of such interlocutor, being recorded in the appropriate register of sasines, shall operate a title by infeftment in the estate in favour of the trustee or judicial factor thereby appointed, in the same manner as if he had been a trustee named in the completed and recorded title, in conformity always with the nature and terms of the appointment, and to the effect of enabling him to perform the duties of the office to which he is appointed.

(a) The object of this section is to simplify the making up of a title to land by a new trustee or judicial factor appointed by the Court, in cases where a trust title has already been completed and

Page 390, top.

In practice it is not usual for a trustee or judicial factor to make up his title under this section by merely recording an extract of the interlocutor making the appointment, without obtaining by separate motion and interlocutor the authority of the Court to make up his title. See Mackay's Practice of the Court of Session, vol. ii., p. 376, note (a).

recorded, the recording of an extract of the interlocutor appointing such trustee or factor being made to operate his infestment. Recourse must be had to this section in all cases where previous trustees or judicial factors have taken infestment; but where they have not done so, the title will be made up under the provisions of section 24 of the Consolidation Act, which see *ante*, p. 79.

(b) That is to say, a title made up by trustees or judicial factors.

(c) New trustees may be appointed by the Court under section 12 of the Trusts Act of 1867 (30 and 31 Vict., c. 97).

(d) The interpretation clause of this Act does not define the words "judicial factor;" but it is thought that the meaning is restricted by the context to judicial factors on trust-estates, and does not extend to curators *bonis* to persons under incapacity, factors *loco tutoris*, or factors *loco absentis*. It is provided that the interlocutor making the appointment shall specify the trust-deed, which would be impossible in the case of curators *bonis*, &c.

(e) These particulars should be set forth in the petition, so that they may be transferred to the interlocutor.

Page 390, end of note (e).

If the Clerk of Court omits to transfer them to the interlocutor the title may, it is thought, be competently made up under the provisions of section 24 of the Consolidation Act, *ante*, p. 79.

45. *How title shall be completed when the holder of an office or proprietor is ex officio a trustee and his successor in office takes the trust (a).—*When by the tenor of the title to any estate in land (b) held in trust duly completed in favour of the trustee or trustees therein named, or any of them, and recorded in the appropriate register of sasines (c), the office of a trustee has been or shall be conferred upon the holder of any place or office, or proprietor of any estate, and his successors therein, any person subsequently becoming a trustee by appointment or succession to the place or office or estate to which the office of trustee has thus been or shall be annexed shall be deemed and taken to have a valid and complete title by infestment in the estate, in the same manner and to the same effect as if he had been named in the completed and recorded title, without the necessity of any deed of conveyance or other procedure.

(a) The object of this section is to obviate the necessity of making up titles in persons succeeding *ex officio* as trustees to others

who have completed a title. Previously, a conveyance by the surviving trustees to the trustee succeeding *ex officio* was requisite, except in the case of trustees for religious and educational purposes under section 26 of the Consolidation Act, *ante*, p. 88.

(b) The words "estate in land" here mean any interest in land, whether in fee or in security, or any real burden on land, and include an estate of superiority. See interpretation clause (section 3, paragraph 2), *ante*, p. 301.

(c) The operation of the section is thus made to depend on infetment having already been taken by the trustees or trustee.

46. *Trustees or executors may complete title where no direct conveyance of lands to them (a).*—Where in any mortis causa conveyance, grant, or testamentary deed or writing purporting to convey or bequeath lands within the sense and meaning of the twentieth section of "The Titles to Land Consolidation (Scotland) Act, 1868" (b), and appointing trustees or executors, the words of conveyance, grant, or bequest (c) are not expressed to be in favour of such trustees or executors, it shall nevertheless be lawful for such trustees or executors to complete a title to such lands in their own persons to the same effect and in the same manner as if the conveyance, grant, or bequest had been expressed to be in favour of them as such trustees or executors, and that by notarial instrument or in any other manner competent to a general disponent (d); and to hold, administer, and dispose of such lands for the purposes of such mortis causa conveyance, grant, or testamentary deed or writing: Provided always, that nothing herein contained shall prevent any disponent, grantee, or legatee to whom such lands may be expressly conveyed, granted, or bequeathed by such mortis causa conveyance, grant, or testamentary deed or writing, from completing a title thereto in his own person in terms of said recited Act where the completion of such title shall not be at variance with the purposes or directions of such mortis causa conveyance, grant, or testamentary deed or writing (e).

(a) This section is not very clearly expressed, but its object appears to be to enable trustees or executors to complete a title to a testator's heritage in cases where the will or testamentary writing appointing them does not contain words of direct conveyance, grant, or bequest in their favour. Section 20 of the Consolidation Act having made it competent to bequeath heritage in the same way as moveable estate, it was held that trustees appointed to administer the testator's whole estate were entitled to take the heritable estate and administer it in terms of the trust, although there were no words of direct conveyance in their favour; see cases mentioned in note (g) to section 20 of the Consolidation Act, *ante*, p. 67. In order to complete a title, however, such trustees required to get the testator's heir, either voluntarily or on legal compulsion, to make up a title to the heritable estate, and to convey it to them. The present section puts trustees or executors, appointed by any testamentary writing purporting to bequeath heritage to any person, in the same position, as regards the completion of titles to and the administration of such estate, as if there had been a direct conveyance thereof in their favour. The proviso at the end of the section shows that this enactment applies even where there is a party to whom the lands are expressly conveyed or bequeathed, although such a party is permitted to make up a title in his own person where his so doing is not at variance with the purposes or directions of the will or testamentary writing.

This section seems designed to meet the case of inconsistently expressed wills being prepared by persons ignorant of law. Examples of such cases will be found in note (g) to section 20 of the Consolidation Act, *ante*, p. 67.

(b) *Ante*, p. 63.

(c) The section assumes that there are words implying a bequest, if not a conveyance, of the lands in favour of some one; otherwise the testamentary writing would not purport to convey or bequeath lands.

(d) As to the mode of completing the title, see section 19 of the Consolidation Act, *ante*, p. 59. The notarial instrument should bear to be taken in terms of both the Consolidation Act and the Conveyancing Act.

(e) Apparently, the trustees or executors are allowed the option of making up a title in their own persons, even where it is not at variance with the purposes and directions of the will that the legatee to whom the lands are expressly bequeathed should complete a title in his own person. But, of course, they will not be able to do so in the event of the legatee having already taken advantage of this proviso.

47. *Securities upon land, and relative personal obligations, shall transmit against heirs and disponees (a).*—Subject to the limitation herein-before provided as to the liability of an heir for the debts of his ancestor (b), an heritable security (c) for money duly constituted upon an estate in land (d) shall, together with any personal obligation to pay principal, interest, and penalty contained in the deed or instrument whereby the security is constituted, transmit against any person taking such estate by succession, gift, or bequest, or by conveyance, when an agreement to that effect appears in gremio of the conveyance (e), and shall be a burden upon his title in the same manner as it was upon that of his ancestor or author, without the necessity of a bond of corroboration or other deed or procedure; and the personal obligation may be enforced against such person by summary diligence or otherwise, in the same manner as against the original debtor. A warrant to charge may be applied for and validly granted in the Bill Chamber or in a Sheriff Court, in the form set forth in Schedule K. hereto annexed, or in a similar form (f), and all diligence may thereafter proceed against the party in common form. A discharge of the personal obligation of the original or any subsequent debtor, whether granted before or after the commencement of this Act (g), shall not, where the debt still exists, prejudice the security on the estate or the obligation as hereby made transmissible against the existing proprietor.

(a) The object of this section is to make the personal obligation for payment in a heritable security transmissible against any one acquiring the lands by succession or bequest, or by a conveyance containing an agreement to that effect. Previously, when the debtor died, his heir or representative, though he might be sued for payment in an ordinary action, was not at once liable to personal diligence under the heritable security to which he had not been a party; the debt required first to be constituted against him, either by the decree of a competent court or by his granting a bond of corroboration. Similarly, where lands were sold under burden of an existing security, and it was desired to substitute the personal obligation of the purchaser for that of the seller, it was necessary, not merely that the disposition should declare the debt to be a real bur-

den affecting the purchaser's right, but also that the purchaser should grant a bond of corroboration to the creditor binding himself personally for payment of the debt. The release of the seller might then be effected by the creditor granting a discharge of the seller's personal obligation, reserving the real security constituted over the lands; but it was doubted whether such a discharge did not operate a discharge of the real security as ancillary to the personal obligation. The present section both removes this doubt and renders unnecessary the procedure above mentioned.

(b) Viz., section 12, which provides that an heir shall not be liable for the debts of his ancestor beyond the value of the estate to which he succeeds.

Page 391, end of
note (e).

Such an agreement must be express, and will not be inferred from the mere disposition of a property under burden of a bond (*Kitchie and Sturrock v. Dullatur Feuing Co.*, Dec. 16, 1881, 9 R. 358) even where the purchaser undertakes in the disposition to relieve the seller of and from the bond (*Carrick and Others v. Rodger Watt & Paul*, 3d Dec. 1881, 9 R. 242). Even where an express agreement to the effect referred to appears *in gremio* of a disposition to which the creditor is not a consenting party, the seller is not relieved of his personal liability to the creditor; the effect of the present enactment

(c) As to the deeds included in the expression "heritable security," see the interpretation clause (section 3, paragraph 4), *ante*, p. 302.

(d) The words "estate in land" mean any interest in land, whether in fee, liferent, or security, and whether beneficial or in trust, or any real burden on land, and include an estate of superiority; see interpretation clause (section 3, paragraph 2), *ante*, p. 301.

(e) By the interpretation clause (section 3, paragraph 4), *ante*, p. 302, the word "conveyance" is declared to include almost every conceivable writing used for the purpose of transferring rights to lands. Here, however, a distinction is drawn between deeds of gift or bequest on the one hand, and other conveyances on the other hand. In order that the section may apply, it is necessary in the latter, but not in the former, case that an agreement to the effect referred to should appear *in gremio* of the deed.

(f) As the section does not positively prescribe the use of the form given in the schedule, a warrant, otherwise unobjectionable, will not be invalid on the ground that the minute on which it was obtained was not conform to the schedule; see note (m) to section 41, *ante*, p. 385.

(g) It seems doubtful whether the words "whether granted before or after the commencement of this Act" refer to the discharge or to the personal obligation. If they refer to the discharge, they would give retrospective effect to this clause; and this would not be at all unreasonable, considering the uncertainty of the previous law on the subject.

being in such a case merely to give the creditor an additional debtor, in the same way as if the purchaser had granted a bond of corroboration without any discharge being granted by the creditor to the personal obligation previously undertaken by the seller.—*University of Glasgow v. Yuill's Trustees*, Feb. 10, 1882, 9 R. 643.

SCHEDULE K.

FORM OF MINUTE TO BE PRESENTED IN BILL CHAMBER OF COURT OF SESSION, OR IN SHERIFF COURT, FOR WARRANT TO CHARGE AN HEIR OR DISPONEE UNDER A PERSONAL OBLIGATION BY HIS ANCESTOR OR AUTHOR.

Warrant is craved, in virtue of "The Conveyancing (Scotland) Act, 1874," at the instance of *A.B.* [*name and design applicant*], the creditor [*if he is not the original creditor, or only a partial creditor, add, in virtue of (or to the extent and in virtue of) the assignation (or general disposition and notarial instrument or other writ or writs forming the title in the creditor's person) in his favour after mentioned*] under a bond and disposition in security over the lands of [*specify shortly the lands*], for the principal sum of £ , with corresponding interest and penalties, granted by *C.D.* [*design him*], then proprietor of the said lands, in favour of the said *A.B.* [*or of G.H. (design him), as the case may be*], and dated [*state date*] [*and if recorded say, and recorded in the register of sasines (state register and date of recording), or and instrument of sasine thereon recorded, &c., as the case may be*]: To charge *E.F.* [*design him*], the present proprietor of the said lands, and as such the present debtor in the said bond and disposition in security, to make payment to the said *A.B.* of the said principal sum of £ contained in and due by the said bond and disposition in security [*if A.B. is only a partial creditor, say, of the principal sum of £ being the extent to which the said A.B. is in right of the said bond and disposition in security*]: and also of the further sum of £ being the amount of the interest now due thereon. Produced herewith the said bond and disposition in security [*or an extract thereof from the books of Council and Session, or from the register of sasines; if the applicant is not the original creditor, the title in*

his own person to the security will also be stated and produced].

Dated the

day of

(Signed)

*A.B., W.S., Edinburgh,
[or as the case may be].*

The Clerk of the Bills, or Sheriff Clerk, as the case may be, will subjoin

Fiat ut petitur.

[To be dated and signed by the Clerk.]

48. *Provisions for disencumbering lands sold under heritable securities when no surplus emerges (a).—* Where lands (b) are sold by an heritable creditor under the powers competent to creditors in heritable securities (c), and it shall occur that no surplus remains (d) after deducting the debt secured, with the interest due thereon, and penalties incurred, and expenses in reference to the possession of the estate (if the creditor had been in possession), including expense of insurance, repairs, and management, and whole expense attending such sale, and after paying all previous incumbrances, and the expense of discharging the same, it shall be competent to any notary public to execute a certificate to that effect in, or as nearly as may be (e) in, the terms of Schedule L., No. 1, hereto annexed, and the disposition by the creditor to the purchaser shall, along with such certificate, when recorded (f) in the appropriate register of sasines, have the effect of completely disencumbering the lands and others sold of all securities and diligences prior and posterior to the security of such creditor, as well as of the security and diligence of such creditor himself, save and except when the security and diligence of such creditor shall be assigned by way of further or collateral security to the purchaser.

(a) The object of this section is to give a clear title to a purchaser of lands sold by a heritable creditor, in the event of there

being no surplus after payment of the debt due to the creditor. Sections 122 and 123 of the Consolidation Act, which provided that upon a sale being carried through in terms of that Act, and upon consignment of the surplus of the price, the disposition by the creditor to the purchaser should have the effect of disencumbering the lands, omitted to provide for the case of there being no surplus.

(b) The word "lands" includes "all subjects of heritable property which are or may be held of a superior according to feudal tenure, or which prior to the commencement of this Act have been or might have been held by burghage tenure, or by tenure of booking;" section 3, paragraph 1, *ante*, p. 301.

(c) As to the variety of deeds included under "heritable securities," see interpretation clause (section 3, paragraph 4), *ante*, p. 302.

(d) The operation of this section is made dependent on there being truly no surplus; and evidence of this should therefore be preserved. The notary's certificate is merely a mode of putting on record the creditor's statement that there is no surplus.

(e) There should be no actual deviation from the form given in the schedule.

(f) With warrant of registration thereon; see section 33, *ante*,
p. 372.

SCHEDULE L.

No. 1.

FORM OF CERTIFICATE (a) WHERE LANDS ARE SOLD
UNDER HERITABLE SECURITY AND NO SURPLUS
EMERGES.

I, *A.B.* [*insert designation*], notary public, with reference to the sale of all and whole the lands of [*describe or refer to (b) the lands*], which took place at upon the day of at the instance of *C.D.* [*design him*], in virtue of the power of sale contained in a bond and disposition in security for the sum of £ , with interest and penalties corresponding thereto, dated and recorded in the register of sasines for the day of granted by *G.H.* [*design him*] in favour of the said *C.D.* [*or in favour of E.F.*

(*design him*), but to which the said *C.D.* has acquired right by progress (*or otherwise as the case may be*), do hereby certify that there has been submitted to me a statement of the intromissions of the said *C.D.* with the price of the said lands subscribed, as authentic, by the said *C.D.* [*or by M.N., agent of the said C.D., on his behalf*], from which it appears that no surplus remains for consignment in bank, in terms of the 122nd and 123rd sections of "The Titles to Land Consolidation (Scotland) Act 1868;" and I make this certificate in terms of "The Conveyancing (Scotland) Act, 1874."—In witness whereof [*testing clause*] (*c*).

(*a*) The stamp duty is 5s.

(*b*) The reference will be in terms of Schedule O., *post*, p. 417.

(*c*) As to the form of testing clause, see note (*d*) *ante*, p. 56.

49. *Provision for disencumbering lands of heritable security* (*a*).—Where the debtor in any heritable security (*b*), whether granted before or after the commencement of this Act, shall have exercised the power or right of redemption contained therein (*c*), but where from the death or absence of the creditor, or any other cause (*d*), the debtor cannot obtain a discharge of the incumbrance created by the security, it shall be competent to him to consign (*e*) the amount, principal and interest, due, and thereupon it shall be competent to any notary public to expedite a certificate in, or as nearly as may be (*e*) in, the terms of Schedule L., No. 2, hereto annexed, and the recording (*f*) of the said certificate in the appropriate register of sasines shall, provided the principal debt and all interest due thereon in terms of the security shall have been so consigned (*g*), have the effect of completely disencumbering the lands contained in such heritable security of the debt and of all interest and penalties corresponding thereto.

(*a*) The object of this section is to provide a mode of clearing

the record of a heritable security, where the debtor has exercised his right of redemption, but cannot obtain from the creditor a discharge of the security. In order to take advantage of this section, it seems necessary that the requisite notice of redemption shall have been given by formal premonition in the presence of a notary public and witnesses.

(b) As to the variety of deeds included under "heritable securities," see the interpretation clause (section 3, paragraph 4), *ante*, p. 302.

(c) As provided for by section 119 of the Consolidation Act, *ante*, p. 230.

(d) Such, for example, as the refusal of the creditor to grant a discharge.

(e) There should be no actual deviation from the form given in the schedule.

(f) With warrant of registration thereon; see section 33, *ante*, p. 372.

(g) The operation of this section is made dependent on the consignment of the full amount due at the date thereof, and evidence of this should therefore be preserved. The notary's certificate is merely a mode of putting on record the debtor's statement that the full amount was consigned.

SCHEDULE L.

No. 2.

FORM OF CERTIFICATE (a) WHERE LANDS HAVE BEEN RE-DEEMED OF HERITABLE SECURITY, BUT DISCHARGE CANNOT BE OBTAINED.

I, *A.B.* [*design him*], notary public, do hereby certify that *C.D.* [*design him*], proprietor of the lands of *X.* [*name the lands as shortly as possible*] and others in the county of *Y.*, being the lands contained in the bond and disposition in security [*or other deed of security*] for £ after mentioned, has appeared before me and represented that he did on the day of consign in the bank at the sum of £ with £

being the whole interest due under the said bond and disposition in security [or other deed of security] in name of *E.F.* [design him] the creditor in the said bond and disposition in security [or other deed of security; if only a partial creditor say to the extent of £

]; which consignation was made in virtue of the power of redemption reserved in the said bond and disposition in security [or other deed of security] which was granted by the said *C.D.* [or by *J.K.* (design him), then proprietor of the said lands], in favour of the said *E.F.* [or *L.M.* (design him) the original creditor in the said security], and is dated [insert date] and recorded in the register of sasines for the

day of [if sasine was expedite on the bond and disposition in security, or other deed of security, instead of and recorded, &c., say, on which bond and disposition in security (or other deed of security) the said *E.F.* (or *L.M.* as the case may be) was infet conform to instrument of sasine in his favour recorded in the register of sasines for the day of];

and the said consignation was rendered necessary by the refusal of the said *E.F.* to receive the said sum of £ and interest thereon [or by the absence of the said *E.F.*, or otherwise as the case may be, stating the reason why discharge could not be obtained], notwithstanding that the requisite notice of redemption was given to him; and I make this certificate in terms of "The Conveyancing (Scotland) Act, 1874."—In witness whereof [testing clause (b)].

(a) The stamp duty is 5s.

(b) As to the form of testing clause, see note (d), ante, p. 56.

50. *Form and effect of assigning right of relief or other right affecting land (a).*—An assignation or conveyance of any obligation or right of relief or other right connected with lands (b), but the title to which does not, according to the present law, pass under the general assignation of writs in the disposition of the

lands (c), may be granted in, or as nearly as may be in, the form of Schedule M. hereto annexed, and may either be a separate deed or part of another deed (d), and shall have the effect of vesting in the person or persons in whose favour it is granted, and his or their successors (e), a valid and complete right and title to the obligation or right thereby assigned or conveyed, with all the intermediate transmissions thereof, to the same effect in all respects as if an assignation or conveyance in the form at present in use (f) had been granted in his or their favour.

(a) The object of this section is to provide a short form for the assignation of such obligations connected with land as do not pass under the usual clause assigning the writs generally.

(b) The word "lands" includes "all subjects of heritable property which are or may be held of a superior according to feudal tenure, or which prior to the commencement of this Act have been or might have been held by burgage tenure, or by tenure of booking;" see section 3, paragraph 2, *ante*, p. 301.

(c) The general assignation of writs does not assign the writs to any effect beyond what is appropriate to them as feudal titles. Hence an obligation of relief or warrandice against public or parish burdens, such as minister's stipend or augmentations thereof, does not pass without a special assignation, unless it has been granted by a superior in favour of his vassal, in which case it runs with the lands; see Bell's Lectures, 1st ed., pp. 594 and 644.

(d) It will generally be part of another deed, that is to say, one of the clauses in a disposition.

(e) The word "successors" here means heirs and assignees.

(f) The form referred to was as full and explicit as that used in assigning an ordinary bond.

SCHEDULE M.

FORM OF ASSIGNATION OF RIGHT OF RELIEF, &c. (a).

I [*here insert the name and designation of the granter, and the cause of granting, unless the assignation forms part of another deed*] (b) hereby assign to C.D. [*here insert*

the designation of the grantee, unless already given], and his heirs and assignees [*or and his foresaids*], a disposition [*or other deed, as the case may be*] granted by [*here insert the names and designations of the persons by and in whose favour the deed to be assigned was granted, with its date, and also the date of registration, and the register in which it is recorded, if it has been recorded*], whereby the said [*name of the original granter of the disposition or obligation*] bound and obliged himself, his heirs and successors [*here insert the terms of the obligation in the terms so far as possible of the disposition or other deed, e.g.*], “to warrant the parsonage teinds of the lands of” [*here specify by description or reference, if not already done, the lands to which the obligation or right refers*] “from
 “all future augmentations of minister’s stipend or other
 “burden imposed or to be imposed upon the said
 “parsonage teinds except the stipend presently payable
 “to the minister of ,” [*or as the case may be. If the right to be assigned was originally granted in favour of some other person than the granter of the assignation, here specify the series of writs by which he acquired right, and add testing clause*] (c).

(a) The stamp duty is 10s.

(b) If the assignation forms part of another deed, the name and designation of the granter, &c., will, of course, have been already mentioned.

(c) The direction “add testing clause” is appropriate to the case of the assignation being a separate deed. As to the requisites of the testing clause, see section 38, *ante*, p. 378.

51. *Probate equivalent to will or extract for completing title (a).*—The production to any notary public of the probate of the will or other testamentary settlement of a person deceased, issued by any court of probate in England or in Ireland, or in any British colony or dependency, or of an exemplification (b) of such probate, shall, for the purpose of expediting a notarial instrument, or otherwise completing a title to any estate in land or to any heritable security, be held to

be equivalent to and as effectual as the production to such notary of the will or settlement itself, or of an extract thereof from the Books of Council and Session, and it shall not be competent to institute any challenge of any notarial instrument in respect of the probate or exemplification having been used as the warrant for expeding the same prior to the commencement of this Act.

(a) The object of this section is to remove a difficulty arising under section 20 of the Consolidation Act. That section having rendered it competent to bequeath Scotch heritable estate in the same way as moveable estate, it was held that a will executed in England, or other country, in accordance with the formalities required by the law of the place of execution, was effectual as a conveyance of lands in Scotland; see note (f) to section 20 of the Consolidation Act, *ante*, p. 66. But, in making up a title, a difficulty arose from the fact that, when a will is proved, the original is deposited in the Court of Probate, and never given up again; and it was doubtful whether a notarial instrument could be competently expedite on the probate (*i.e.*, the official extract) of the will. This doubt is removed by the present section, which, moreover, has retrospective effect, so as to validate notarial instruments expedite on probates of wills, before as well as after the commencement of the Act.

(b) An exemplification is a copy under the great seal or under the seal of the particular court where the record remains; see Best's Principles of the Law of Evidence, 6th ed., sec. 486; Greenleaf's Law of Evidence, 13th ed., vol. i., sec. 501; and Dickson's Law of Evidence, sec. 1283.

52. *Decrees of service unchallengeable on certain grounds (a).*—It shall not be competent to challenge any judgment or decree of service pronounced in terms of the Act 10th and 11th Victoria, chapter forty-seven, intituled “An Act to amend the law and practice “ in Scotland as to the Service of Heirs,” or of “The “ Titles to Land Consolidation (Scotland) Act, 1868,” and dated before the commencement of this Act (b), or any extract of any such judgment or decree, or any titles following upon such judgment, decree, or extract, on account of any objection to the manner or form in which such judgment or decree was recorded or extracted by the Director of Chancery or his depute,

or on the ground that the manner and form of recording or extracting such judgments or decrees in use by the Director of Chancery or his depute for the time had not been directed or approved of by the Lord Clerk Register in terms of the said Acts, or on the ground that evidence was led in the petition on which such decree followed, and that the decree itself was pronounced before the expiry of the induciæ, or days of publication prescribed under the tenth section of the former Act, or under the thirty-third section of the latter Act.

(a) The object of this section is to secure decrees of service, pronounced before the commencement of this Act, from the risk of challenge in respect of the manner in which they have been recorded or extracted, or on account of their having been pronounced before the expiry of the induciæ. Section 36 of the Consolidation Act, *ante*, p. 112 (re-enacting section 12 of the Service of Heirs Act of 1847), directed decrees of services to be recorded by the Director of Chancery or his depute in the manner and form directed or approved of, or to be directed or approved of, from time to time, by the Lord Clerk Register; and section 33 of the Consolidation Act, *ante*, p. 107 (re-enacting section 10 of the Service of Heirs Act), provided that no evidence should be led or decree pronounced till after the lapse of a certain time. Sufficient regard, however, does not appear to have been given to these provisions, with the result, it was feared, of invalidating the decrees.

It is to be observed that this section applies only to decrees of service pronounced before the commencement of this Act.

(b) *Viz.*, 1st October 1874.

53. *Form of completing title to heritable securities under a general disposition* (a).—It shall be competent to the grantee under a general disposition within the sense and meaning of the nineteenth section of “The Titles to Land Consolidation (Scotland) Act, 1868” (b), or to a person acquiring or deriving right from such grantee, to complete a title to an heritable security (c) belonging to the granter of such general disposition, and in which such granter was infest, by expediting and recording (d) in the appropriate register of sasines a notarial instrument in, or as nearly as may be in, the form of Schedule N. hereto annexed, and on such

notarial instrument being so expedite and recorded, the grantee or the person acquiring or deriving right from such grantee, as the case may be, in whose favour such instrument has been expedite shall be vested with the full right of the creditor in such security, and shall be held to be entered with the superior in like manner and to the same effect as the original creditor himself (e). And it shall not be competent to challenge the validity of any notarial instrument expedite and recorded before or after the commencement of this Act with reference to any heritable security in terms of the said nineteenth section of the said Act upon the ground that such notarial instrument is not in the form of Schedule L. (f) annexed to the said Act, or that the said form is not adapted to heritable securities.

(a) The object of this section is to provide a form of notarial instrument specially adapted to the completion by a general disponee of a title to heritable securities, and to protect from the risk of challenge such notarial instruments expedite under section 19 of the Consolidation Act, whether before or after the commencement of the present Act. The above section of the Consolidation Act provided a form of notarial instrument (Schedule L., *ante*, p. 62) by which the grantee under a general disposition of "lands" might complete a title thereto, and the word "lands" was declared by the interpretation clause to include "all heritable subjects, securities, and rights." Hence this form of instrument was sometimes used to complete a title to a heritable security, although another form (Schedule KK., *ante*, p. 250) was specially provided by section 127 for the completion of such a title. The effect of the present section is to render competent the use of any one of three forms, viz., those contained in Schedules L. and KK. of the Consolidation Act, and Schedule N. of the present Act.

(b) *Ante*, p. 59.

(c) As to the variety of deeds included under "heritable security," see interpretation clause (section 3, paragraph 4), *ante*, p. 302.

(d) With warrant of registration thereon; see section 33, *ante*, p. 372.

(e) That is to say, either with the debtor or with his superior, as the original creditor may have been. The original creditor can have been entered with the debtor, *i.e.*, have been his vassal, only in the case of the heritable security having expressed the holding to be *de me*.

(f) *Ante*, p. 62.

Page 405, line 13.

The word "not" occurring in this line of the section has been inserted by the Legislature *per incuriam*, as clearly appears from the words immediately following. These words undoubtedly render Schedule (L) applicable to heritable securities, while section 64 of the Conveyancing Act, *post*, p. 425, sanctions the continued use of Schedule (K K) which was the more appropriate form. The use of Schedule (N) is merely permissive, not imperative.

SCHEDULE N.

FORM OF INSTRUMENT (a) IN FAVOUR OF A GENERAL DISPONEE OR HIS ASSIGNEE IN RIGHT OF AN HERITABLE SECURITY.

At there was by [*or on behalf of*] (b) *A.B.* of *Z.*, presented to me, notary public subscribing, a bond and disposition in security [*or other security or extract as the case may be*] dated [*insert date, and where recorded in the register of sasines insert date of recording and specify register of sasines*], granted by *C.D.* [*insert designation*] in favour of *E.F.* [*insert designation*] [*if sasine has been expedite thereon add, and instrument of sasine thereon in favour of the said E.F., recorded in the (specify register of sasines and date of registration)*], by which bond and disposition in security [*or as the case may be*] the said *C.D.* bound and obliged himself [*insert the personal obligation so far as necessary, and disposition of the lands in security, with the description of them, and also all real burdens, &c., if any, all as set forth at full length or by reference in the bond and disposition in security, or other security*]: As also, there was presented to me a general disposition [*or other deed or writing containing a general conveyance, or an extract of such deed or writing, or otherwise as the case may be*], granted by the said *E.F.*, and dated [*insert date*], by which general disposition [*or otherwise as the case may be*] the said *E.F.* assigned and disposed [*or otherwise as the case may be*] to the said *A.B.* and his executors and assignees [*or otherwise as the case may be*], heritably and irredeemably [*or, in liferent, or otherwise as the case may be*], all and sundry his whole heritable and moveable estate [*or otherwise as the case may be, and if the deed be granted in trust or for specific purposes, add, but in trust always, or, for the uses and purposes specified in the said general disposition (or otherwise as the case may be)*], in which general conveyance was included the said bond and disposi-

tion in security [or other security] [and infeftment following thereon *if infeftment was expedie*], the said *E.F.* being then vest therein as aforesaid. [*If the granter of the general disposition or other deed or writing was not the original creditor, but one who had acquired right to the security, instead of as aforesaid here say in virtue of the following writs, viz. (specify shortly the title or titles by which he acquired right to the security.) If the person expeding the instrument be other than the original grantee under the general disposition or other deed or writing, add,* As also, there were presented to me the following writs whereby the said *A.B.* acquired the said general disponee's right to the said bond and disposition in security [and infeftment following thereon] [*or otherwise as the case may be*], viz. [*specify the title or series of titles by which such person acquired right, and the nature of his right*)]. Whereupon this instrument is taken in the the hands of *L.M.* [*insert name and designation*], notary public, in terms of "The Titles to Land Consolidation (Scotland) Act, 1868," and "The Conveyancing (Scotland) Act, 1874."—In witness whereof [*testing clause (c)*].

(a) The stamp-duty is 5s.

(b) The word "by" is intended to be used where the presentation is made by the party himself, and the words "on behalf of" where it is made by the party's agent.

(c) As to the form of testing clause, see note (d) *ante*, p. 56.

54. *Recorded deed or instrument unchallengeable on certain grounds (a).*—No challenge of any deed, instrument, or writing (b) recorded in any register of sasines shall receive effect on the ground that any part of the record of such deed, instrument, or writing is written on erasure, unless such erasure be proved to have been made for the purpose of fraud, or the record is not conformable to the deed, instrument, or writing as presented for registration (c).

(a) The object of this section is to prevent any recorded deed or instrument being challenged solely on the technical ground that there are erasures in the record. Section 144 of the Consolidation Act, *ante*, p. 272, provides for the converse case of there being erasures in notarial instruments, without any discrepancy between the words written on erasure and those appearing in the record, a provision restricted however to notarial instruments.

This enactment appears to be retrospective, so as to apply to all deeds and instruments, whatever may be the date of recording them.

(b) The words "deed" and "instrument" are defined in the interpretation clause (section 3, paragraph 4, *ante*, p. 302); but the use of the additional word "writing" here renders the section applicable to every species of document recorded in a register of sasines.

(c) In the cases here excepted, only material erasures will be fatal to the recording.

55. *Section 118 of the Bankruptcy Act of 1856 repealed* (a).—Section one hundred and eighteen of "The Bankruptcy (Scotland) Act, 1856," is hereby repealed; and it is provided that all heritable creditors who have been in possession under their securities (b), and whose right to the rents collected by them has not been challenged by action previous to the commencement of this Act (c), shall be entitled to retain and apply all rents collected by them in the same manner as they might have done if the provisions of the section hereby repealed had not been enacted.

Page 408, section 55.

This section was amended by "The Conveyancing (Scotland) Act 1874 Amendment Act 1879" (42 & 43 Vict. c. 40) which came into operation on 1st December 1879, to the following effect:—

"3. Notwithstanding the repeal of section one hundred and eighteen of the Bankruptcy (Scotland) Act 1856 by section fifty-five of the Conveyancing

(a) The chief object of this section is to restore the law to the state in which it was before the year 1839, with reference to competitions between heritable creditors and trustees in sequestrations. Prior to the Bankruptcy Act of 1839 (2 and 3 Vict. c. 41), it was settled law that a heritable creditor who had obtained a decree of mails and duties, or who had executed a summons of poinding the ground, before the confirmation of the trustee in the debtor's sequestration, though after the date of the sequestration, was entitled to a preference over the trustee, as regards the rents of the lands, or the debtor's moveables situated thereon, or those of the tenants to the extent of their rents, as the case might be, to the full extent of the debt covered by the heritable security, viz., both the principal sum and the whole interest accrued or that might accrue thereon till payment. This preference was, however, limited by sections 78,

79, and 95 of the Bankruptcy Act of 1839, which, though repealed by section 2 of the Bankruptcy Act of 1856 (19 and 20 Vict. c. 79), were substantially re-enacted by sections 102 and 118 of the latter Act. Section 102 provides that the act and warrant of confirmation in favour of the trustee shall, *ipso jure*, transfer to and vest in him, absolutely and irredeemably, as at the date of the sequestration, the whole property of the debtor, the moveable estate subject to such preferable securities as existed at that date, and the heritable estate "to the same effect as if a decree of adjudication and implement of sale, as well as a decree of adjudication for payment and in security of debt, subject to no legal reversion had been pronounced in favour of the trustee, and recorded at the date of the sequestration, and as if a poiding of the ground had then been executed, subject always to such preferable securities as existed at the date of the sequestration, and are not null and reducible, and the creditors' right to poid the ground, as herein-after provided," viz., by section 118, which provided that "no poiding of the ground which has not been carried into execution by sale of the effects sixty days before the date of sequestration, and no decree of maills and duties on which a charge has not been given sixty days before the said date, shall (except to the extent herein-after provided) be available in any question with the trustee; provided, that no creditor who holds a security over the heritable estate preferable to the right of the trustee shall be prevented from executing a poiding of the ground, or obtaining a decree of maills and duties after the sequestration, but such poiding or decree shall, in competition with the trustee, be available only for the interest on the debt for the current half-yearly term, and for the arrears of interest for one year immediately before the commencement of such term."

The present section of the Conveyancing Act repeals the above-quoted section of the Bankruptcy Act; and it has been expressly decided in the recent case of *the Royal Bank v. Bain*, 6th July 1877, 4 Rettie, 985, that the effect of this repeal is to revive the common-law right, above explained, of a heritable creditor who has executed a poiding of the ground.

The second clause of the section is designed to give retrospective effect to this repeal, in so far as regards heritable creditors who before the commencement of this Act were in possession of the lands over which their securities extended. In the case of *Budge v. Brown's Trs.*, 12th July 1872, 10 Macph. 958, it had been held that a heritable creditor who had entered into possession under a decree of maills and duties, but who had not given a charge thereon sixty days before the sequestration of his debtor, in terms of the section of the Bankruptcy Act above quoted, and now repealed, was bound to account to the trustee for the rents, under deduction of the interest due for the half-year current at the date of sequestration, and the arrears of interest for the year immediately preceding. The present clause reverses this decision, and gives such heritable creditors the right to apply the whole rents collected by them in payment of the princi-

(Scotland) Act 1874, it is provided that from and after the commencement of this Act no poiding of the ground which has not been carried into execution by sale of the effects sixty days before the date of the sequestration shall (except to the extent hereinafter provided) be available in any question with the trustee; Provided that no creditor who holds a security over the heritable estate preferable to the right of the trustee shall be prevented from executing a poiding of the ground after the sequestration, but such poiding shall in competition with the trustee be available only for the interest on the debt for the current half-yearly term and for the arrears of interest for one year immediately before the commencement of such term.

"4. This Act shall not apply to heritable securities constituted prior to the commencement of this Act until the first day of December one thousand eight hundred and eighty-two, and shall not affect any action of poiding of the ground proceeding upon such securities which shall have been instituted prior to the said last-mentioned date, or any decree of poiding obtained in such action prior to said date.

"5. This Act shall be read as part of and construed along with the Bankruptcy (Scotland) Act 1856."

The whole of section 55 of the Conveyancing

Act is included in the Schedule of enactments repealed by the Statute Law Revision Act 1883 (46 & 47 Vict. c. 39). That Act, however, provides that "Where any enactment not comprised in the schedule has been repealed . . . by any enactment hereby repealed, such repeal . . . shall not be affected by the repeal effected by this Act." The result seems to be that section 118 of the Bankruptcy Act of 1856 still stands repealed, subject to the modifications effected by 42 and 43 Vict. c. 40 above quoted. The whole of section 55 of the Conveyancing Act being, however, repealed by the Statute Law Revision Act as above mentioned, the concluding part beginning with the words "And it is provided" must be held as now repealed, the temporary purpose which that part of the section was intended to serve having now been fulfilled.

It has been held by the Second Division that even where a summons of poinding of the ground is executed *after* the trustee's confirmation, the poinding creditor has a preferable right to the moveables attached, provided his real security was completed prior to the sequestration and the moveables are still on the ground—*Dick's Trs. v Whyte's Tr.*, 28th Jan. 1879, 6 R. 586. The effect of an action of poinding of the ground is to attach only those moveables

pal and whole interest payable under their securities, provided their right so to do has not been challenged before the commencement of the Act.

(b) The words "in possession under their securities" appear to be here used as equivalent to the words "under a decree of mails and duties." The present clause authorises the creditors to apply the rents in the same manner as they might have done if the provisions of section 118 of the Bankruptcy Act had not been enacted, and the only case of possession dealt with by that section is that of a creditor under a decree of mails and duties.

(c) Viz., 1st October 1874.

56. Form of executing deeds by companies under the Acts of 1862 and 1867 (a).—Any deed (b) executed after the commencement of this Act (c) to which any company registered under "The Companies Acts, 1862 and 1867" (d), is a party, shall be held to be validly executed in Scotland on behalf of such company if the same is either executed in terms of the provisions of these Acts or is sealed with the common seal of the company, and subscribed on behalf of the company by two of the ordinary directors and the secretary of the company, and such subscription on behalf of the company shall be equally binding and effectual, whether attested by witnesses or not.

(a) The object of this section is to provide a mode by which any deed, by a company registered under the Companies Acts of 1862 and 1867, may be validly executed. These Acts contained no provision for the execution in Scotland of deeds generally, though sections 55 and 64 of the Act of 1862 and section 37 of the Act of 1867 provided for the execution of particular deeds. Hence doubts were experienced as to the proper form of execution to be adopted in Scotland. The usual practice has been to affix the common seal of the company in the presence of two directors or other officials, who appended their subscriptions to the deed. The present enactment, without prejudice to the continued use of any mode competent under the Acts referred to, provides a mode of execution applicable to all deeds executed in Scotland.

(b) As to the variety of documents included by the word "deed," see the interpretation clause (section 3, paragraph 4), *ante*, p. 302.

(c) Viz., 1st October 1874.

(d). Viz., 25 and 26 Vict. c. 89; and 30 and 31 Vict. c. 131.

57. *Certain offices abolished, and the duties of the Sheriff of Chancery, &c., enlarged (a).*—The offices of presenter of signatures and of clerk to the presenter of signatures (b) are hereby abolished, and it shall be competent for the present holders of these offices, and also for the deputy keeper of the Great Seal, to apply to the Commissioners of Her Majesty's Treasury, who are hereby empowered to award to each of such officers such compensation as the said Commissioners of Her Majesty's Treasury may deem just and reasonable, having regard to the terms by which such officers respectively hold their appointments, and to the net average amount of the emoluments received by them, and in the case of the deputy keeper of the Great Seal to the net average amount of emoluments received by him in respect of charters passing that seal, and now abolished under the provisions of this Act, and such compensation as may be awarded shall be subject to the provisions of the twentieth section of the Act of the fourth and fifth years of the reign of His Majesty King William the Fourth, chapter twenty-four, intituled "An Act to alter, amend, and consolidate the Laws for regulating the Pensions, Compensations, and Allowances to be made to persons in respect of their having held Civil Offices in His Majesty's Service;" and from and after the commencement of this Act the duties of the office of presenter of signatures, so far as the same continue to be necessary (c), shall be discharged by the Sheriff of Chancery, and the duties of the office of clerk to the presenter of signatures shall be performed by the sheriff clerk of Chancery; after the commencement of this Act (d) it shall not be necessary either for the Sheriff of Chancery or for the Sheriff of any county to hold a court for the consideration or disposal of any unopposed petition for service (e).

which are actually on the ground at the time of serving the summons; but it is doubtful whether an *interim* factor appointed under the Bankruptcy Act is entitled to remove the moveables for the purpose of defeating the heritable creditor's right to attach them. — *Urquhart v. Anderson*, 16th June 1883, 20 Scot. Law Rep. 670.

Page 411, section 57.

The first part of this section, down to and inclusive of the words "His Majesty's service; and," having now served the temporary purpose for which it was enacted, has been repealed by the Statute Law Revision Act 1883, (46 and 47 Vict. c. 39).

(a) The object of this section is to abolish the offices of pre-

sender of signatures and of clerk to the presenter of signatures (as section 4 of the Act, by abolishing charters by progress, renders these offices almost sinecures) and to transfer to the Sheriff of Chancery and his clerk the few remaining duties attached thereto. There has been appended to this section a separate enactment as to the disposal of unopposed petitions for service.

(b) As to the duties attached to these offices, see *ante*, p. 145 *et seq.*

(c) As to the extent to which these duties continue to be necessary, see note (a) *ante*, p. 145, and note (b) *ante*, p. 305.

(d) Viz., 1st October 1874.

(e) As to the disposal of petitions for service, see *ante*, p. 107 *et seq.*

58. *Provisions as to Chancery office* (a).—The office, duties, and emoluments of the Director of Chancery, and of the deputy directors and clerks of Chancery, or any of them, may be regulated at any time by the Commissioners of Her Majesty's Treasury, and it shall be the duty of the Director of Chancery, in addition to the duties at present discharged by him, from and after the commencement of this Act, to send to every sheriff clerk in Scotland a copy of the printed index or abridgment of the record of services provided to be kept by him by the thirty-eighth section of "The Titles to Land Consolidation (Scotland) Act, 1868" (b), and it shall be the duty of every sheriff clerk to keep the same in his office open for the inspection of the public.

(a) The object of this section is to provide for the regulation, from time to time, of the offices of Director of Chancery and of the deputy directors and clerks of Chancery, and also to give additional publicity to the printed index or abridgment of the record of services.

(b) *Ante*, p. 38.

59. *Act shall apply to lands held of the Crown and Prince* (a).—The provisions of this Act shall apply to

lands held of the Crown and of the Prince, in the same way as to lands held of a subject superior, but shall not prejudice or affect the *jus coronæ* (b) as a title to lands or heritages.

(a) The object of this section is to render it clear that the provisions of the Act, especially those relating to the abolition of renewal of investiture, apply to lands held of the Crown and of the Prince, as well as to those held of subject superiors, without prejudice, however, to the fundamental principle of the feudal system that the sovereign is the paramount proprietor of all lands in the kingdom.

(b) The words "*jus coronæ*" have no technical or definite meaning in Scotch law. They are used in English law to express the right of the Crown by which lands and possessions, whereof the sovereign is seised, follow the Crown in descents, and cannot be gratuitously alienated without the authority of Parliament.

60. *Title to private estates of Her Majesty in Scotland* (a).—Notwithstanding the provisions of this Act, private estates in land of Her Majesty, her heirs or successors, as defined in "The Crown Private Estates Act, 1862" (b), and situate or arising in Scotland, which are or shall be held feudally directly under the Crown as superior, may lawfully be held by Her Majesty, or her heirs or successors, of and under herself or themselves as sovereign or sovereigns of this realm and feudal superiors, and the dominium utile thereof shall not be held to merge in the dominium directum or superiority, or to be consolidated therewith; and such private estates shall not thereby fall or revert to the Crown *jure coronæ* (c), but shall remain beneficially separate private estates of Her Majesty, her heirs and successors.

(a) The object of this section is to prevent any of the provisions of the Act being held to merge Her Majesty's right to her private estates in the paramount right of superiority attached to and descendible with the Crown. The necessity of guarding against such a result arose chiefly from the fact that the bill as originally framed contained provisions, which however were dropped in the course of its passage through Parliament, to the effect that there should be *ipso jure* consolidation of property and superiority when acquired by the same person, unless otherwise expressly provided for.

(b) Viz., 25 and 26 Vict. c. 37. The words "private estates of Her Majesty, her heirs or successors," are defined in section 1 thereof.

That Act provides, *inter alia*, that such private estates of Her Majesty as are held feudally directly under the Crown as superior may be lawfully held by Her Majesty, her heirs or successors, of and under herself or themselves as feudal superiors, and that the *dominium utile* thereof shall not become *ipso facto* consolidated with the *dominium directum*.

(c) As to the meaning of *jus coronæ*, see note (b) to section 59, *ante*, p. 413.

Page 414,
beginning of
section 61.

The introductory words of this section (viz., "*Section 11 of 'The Titles to Land Consolidation (Scotland) Act 1868,' is hereby repealed; and*") are included in the Schedule of enactments repealed by the Statute Law Revision Act 1883 (46 and 47 Vict. c. 39). But this is merely a verbal alteration, as the last-mentioned Act expressly provides that "where any enactment not comprised in the schedule has been repealed... by any enactment hereby repealed, such repeal... shall not be affected by the repeal effected by this Act."

61. *Section 11 of Titles to Land Consolidation Act repealed.—Description of lands contained in recorded deeds may be inserted in subsequent writs by reference merely.—Reference already made in recorded deed not challengeable if certain particulars correctly given (a).—Section eleven of "The Titles to Land Consolidation (Scotland) Act, 1868" (b), is hereby repealed; and it is provided that in all cases where any lands (c) have been particularly described in any conveyance, deed, or instrument (d) of or relating thereto, recorded in the appropriate register of sasines, it shall not be necessary in any subsequent conveyance, deed, or instrument (d), conveying or referring to the whole or any part of such lands, to repeat the particular description of the lands at length; but it shall be sufficient to specify the name of the county, and where the lands were held by burgage or by any similar tenure (e) prior to the commencement of this Act (f), the name of the burgh and county in which the lands are situated, and to refer to the particular description of such lands as contained in such prior conveyance, deed, or instrument so recorded in or as nearly as may be (g) in the form set forth in Schedule O. hereto annexed; and the specification and reference so made in any such subsequent conveyance, deed, or instrument, whether dated prior or subsequent to the commencement of this Act, shall be held to be equivalent to the full insertion of the particular description contained in such prior conveyance, deed, or*

instrument, and shall have the same effect as if the particular description had been inserted in such subsequent conveyance, deed, or instrument exactly as it is contained in such prior conveyance, deed, or instrument; and it is further provided, that it shall not be competent, notwithstanding the terms of the section hereby repealed, or the form of the schedule therein referred to, to object to any specification and reference to any particular description of lands (*c*) contained in any conveyance, deed, or instrument (*d*) recorded prior to the commencement of this Act, provided such specification and reference states correctly the name of the county, and where the lands were held by burghage or by any similar tenure (*e*) prior to the commencement of this Act (*f*), the name of the burgh and county in which the lands are situated, and refers correctly to the prior recorded conveyance, deed, or instrument (*d*) containing the particular description of such lands; and where any conveyance, deed, or instrument (*d*) recorded prior to the commencement of this Act contains a specification and reference stating these particulars correctly, the specification and reference so made shall be held to have been equivalent to the full insertion of the particular description contained in the prior conveyance, deed, or instrument referred to, as if the particular description had been inserted in such recorded conveyance, deed, or instrument exactly as it is contained in the prior conveyance, deed, or instrument referred to.

(*a*) The object of this section is to provide for the description of lands, by reference to a particular description thereof contained in a deed or instrument already recorded. The first enactment authorising such reference was 21 and 22 Vict. c. 76, sec. 15, taking effect from and after 1st October 1858, as regards lands not held burghage, which provided that it should be "sufficient to specify the "leading name or names or other short distinctive description of the "lands conveyed, and the name of the county and parish or supposed parish, and to refer to the particular description contained in "the prior conveyance or other writ so recorded," &c. It being, however, found difficult in practice to determine what was the leading name, or to find a suitable short distinctive description of lands to be conveyed, this provision was repealed by 23 and 24 Vict.

c. 143, sec. 34, taking effect from and after 1st October 1860, which enacted in lieu thereof that, whether the lands were held burgage or not, it should be "sufficient to specify the name of the county, and where the lands are held burgage, the name of the burgh and county in which they are situated, and to refer to the particular description contained in the prior conveyance, discharge, or other deed or instrument so recorded," &c. When the Consolidation Act was framed, it appears to have been thought that this mode of reference was not quite sufficient to identify the lands, and section 11 of that Act accordingly reverted substantially to the provisions of the earlier Act, and provided that in any conveyance or deed, whether dated prior or subsequent to the commencement of the Act, it should be "sufficient to specify some leading name or names or some distinctive description of the lands, as contained in the titles thereto, and to specify the name of the county, and, where the lands are held by burgage tenure, or by any similar tenure, the name of the burgh and county in which they are situated, and to refer to the particular description of such lands as contained in such prior conveyance or deed so recorded," &c. The same difficulty as was felt in regard to the corresponding provision of the earlier Act was again experienced, and the result was that this provision was seldom taken advantage of. The present section accordingly repeals the enactment last above quoted, and renders it once more sufficient to specify the name of the county, or of the burgh and county, as the case may be, in which the lands are situated, and to refer to the particular description as contained in a prior recorded deed or instrument; and retrospective effect is expressly given to this provision.

(b) *Ante*, p. 39.

(c) By the interpretation clause (section 3, paragraph 1), *ante*, p. 301, the word "lands" is declared to include "all subjects of heritable property which are or may be held of a superior according to feudal tenure, or which prior to the commencement of this Act have been or might have been held by burgage tenure, or by tenure of booking."

(d) As to the variety of documents included by the words "conveyance," "deed," and "instrument," see the interpretation clause (section 3, paragraph 4), *ante*, p. 302.

(e) By similar tenure is meant the tenure of booking peculiar to Paisley; see note (c) to section 25, *ante*, p. 362.

(f) As to the abolition of the distinction between estates in land held feu and estates in land held burgage, see section 25, *ante*, p. 359.

(g) There should be no actual deviation from the form here prescribed.

SCHEDULE O.

CLAUSE OF REFERENCE TO PARTICULAR DESCRIPTION OF
LANDS CONTAINED IN A PRIOR CONVEYANCE, DEED,
OR INSTRUMENT.

The lands [*or subjects*] and others [*or the lands delineated and coloured* _____ on a copy of the Ordnance Survey map hereto annexed, and signed as relative hereto], [*or the lands of A. and others*], [*or the house No. 10* _____ Street and others], [*or other like short description*] (*a*), in the county of _____ [*or in the burgh of* _____ and county of _____ *as the case may be* (*b*)], being the (*c*) lands [*or subjects*] particularly described (*d*) in the disposition [*or other conveyance, deed, or instrument, as the case may be*] granted by C.D. (*e*), and dated [*insert date*] and recorded in the [*specify register of sasines*] on the _____ day of _____ [*or as particularly described in the instrument of sasine or notarial instrument* (*f*) recorded, &c. *or as the case may be*. *If part only of lands is conveyed, describe such part as above* (*g*), and add, being part of the lands particularly described, &c., *or thus*, being the lands [*or subjects*] as particularly described, &c., with the exception of, and [*describe the part excepted*].

(*a*) It is recommended that in every case some like short description might be given, so as to facilitate the identification of the lands or subjects referred to. Where this is not done, it will be impossible to identify the subjects, in the event of several conveyances or instruments by or in favour of the same party having been dated and recorded on the same days. In any case, it is convenient that the general nature of the lands or subjects dealt with should appear *ex facie* of every deed or instrument.

(*b*) The name of the burgh requires to be specified, only where the subjects were held by burgage (including booking) tenure prior to 1st October 1874.

(*c*) Here insert the word "whole," if (as the schedule assumes) it is intended to embrace the whole lands or subjects particularly described in the conveyance or instrument referred to. If several distinct subjects are therein described, and it is intended to deal with only one of them, it must be distinguished from the others, as thus—"being the subjects particularly described in the first place," &c., or otherwise as the case may be.

(d) The reference must be to a conveyance or instrument in which the subjects are described at full length, not to one in which they are merely referred to.

(e) It is well to mention, in addition, the name and designation of the person in whose favour the deed has been granted, in case more than one deed should have been granted by the same granter, and recorded, on the same day. But even the mention of these may not be sufficient to identify the subjects, where several conveyances have been granted to the same person on the same day, *e.g.*, where the proprietor of a feuing estate has granted several feu-charters in favour of the same builder. The only way to provide for such a case is to give a short distinctive description, as recommended in note (a) *supra*, or to include in the reference a specification of the volume and folios of the record where the deed or instrument referred to is engrossed.

(f) Specify the person in whose favour the instrument has been expedited, and where there is any reason to believe that more than one instrument of the same description has been recorded of the same date, specify also the writs on which the instrument referred to proceeds.

(g) The part must be described at length, the lands of which it is a part being described by reference in the manner already mentioned.

62. *Section 62 of the Titles to Land Consolidation Act, 1868, and section 4 of the Titles to Land Consolidation Amendment Act, 1869, repealed.—Effect of a decree of adjudication or sale (a).—Section sixty-two of “The Titles to Land Consolidation (Scotland) Act, 1868,” and section 4 of “The Titles to Land Consolidation (Scotland) Amendment Act, 1869” (b), are hereby repealed, and in place thereof the following words shall be deemed and taken to be the sixty-second section of the said Act of 1868, and the said Act of 1868 shall be read and construed as if the sixty-second section thereof had been originally expressed in the following words (c), viz. :*

In all cases a decree of adjudication, whether for debt or in implement, or a decree of constitution and adjudication (d), whether for debt or in implement, if duly obtained in the form prescribed by this Act (e), or obtained, if prior to the commencement of this Act (e),

**Page 418,
beginning of
section 62.**

The introductory words of this section (viz., “*Section 62 of ‘The Titles to Land Consolidation (Scotland) Act 1868,’ and section 4 of the ‘Titles to Land Consolidation (Scotland) Amendment Act 1869,’ are hereby repealed, and in place thereof*”) are included in the Schedule of enactments repealed by the Statute Law Revision Act 1883 (46 and 47 Vict. c. 39). But this is merely a verbal alteration, as the last-mentioned Act expressly provides that “where any enactment not comprised in the schedule has been repealed . . . by any enactment hereby repealed, such repeal . . . shall not be affected by the repeal effected by this Act.”

in the form then in use, or a decree of declarator and adjudication (*f*), or a decree of sale (*g*), shall, except in the case where the subjects contained in the decree of adjudication, or of constitution and adjudication, or of declarator and adjudication, are heritable securities (*h*), be held equivalent to and shall have the legal operation and effect of a conveyance in ordinary form of the lands (*i*) therein contained granted in favour of the adjudger or purchaser (*k*) by the ancestor of such apparent heir, or by the owner or proprietor in trust or otherwise, and whether in life or deceased, of the lands adjudged, or by the seller of the lands sold, although in nonage or of insane mind (*l*), to be holden in the case of lands not held by burgage tenure in the manner and to the effect and subject to the provisions enacted and provided by the sixth section (*m*) of this Act (*e*) in the case of conveyances in which no manner of holding is expressed, and to be holden of Her Majesty in free burgage in the case of lands held by burgage tenure (*n*); and it shall be lawful and competent to such adjudger or purchaser to complete feudal titles to said lands, not only by infeftment on such decree as a conveyance (*o*) or by using it, for the purpose of infeftment, as an assignation or as one of a series of assignations of an unrecorded conveyance (*p*), as the case may be, in the manner provided by this Act (*e*), but also when the lands are not held by burgage tenure, by obtaining from the superior charter of adjudication or of sale of said lands and expeding infeftment on such charter in common form, and where the ancestor of such apparent heir, or the owner or proprietor in trust or otherwise, or seller of the lands adjudged or sold, shall have been or shall be entered with his superior, or in a situation to charge such superior under the powers in this Act contained, to grant entry by confirmation, by taking infeftment on such decree as a conveyance, in the manner provided by this Act, and thereafter obtaining from the superior of the lands a charter or writ of confirmation of such decree and infeftment proceeding on the same, which infeftment shall, with such decree, be an effectual feudal investiture in the said lands in terms of such decree, holding base of the owner or proprietor in trust or otherwise, or seller of the lands adjudged or sold, and his heirs, until confirmation thereof shall be granted by the superior of the lands, in the same manner and to the same effect as if such owner or proprietor or seller had granted a disposition of the lands to the adjudger or purchaser in the terms of the said decree, with an obligation to infeft a me vel de me to be completed by confirmation, and a precept of sasine, and the adjudger or purchaser had been infeft on such precept, and the effect of the charter or writ of confirmation of such decree or of the infeftment thus pro-

ceeding upon the same shall be to make the lands hold immediately of and under such superior ; but the right of the superior to the composition payable by the adjudger or purchaser as due under the existing law is hereby reserved entire, and the adjudger or purchaser, by taking infeftment on any such decree in any of the modes above mentioned, shall become indebted in such composition to the superior, and shall be bound to pay the same on the superior tendering a charter or writ of confirmation, whether such charter or writ shall be accepted or not, and the superior shall be entitled to recover such composition as accords of law ; and it is hereby provided, that such infeftment on any such decree shall, without prejudice to any other diligence or procedure, be of itself sufficient to make the adjudication effectual in all questions of bankruptcy or diligence : Provided always, that where the investiture of any lands has imposed or shall impose a prohibition against sub-infeudation or alternative holding, such adjudger or purchaser shall, in respect of such recorded decree or of any notarial instrument following on such decree, and notwithstanding any such prohibition, be deemed and taken to be duly infeft in the lands adjudged or sold as from the date of recording such decree or instrument, but without prejudice to the right of the superior to require such adjudger or purchaser to enter forthwith as accords of law, and to deal with such adjudger or purchaser, as with a vassal unentered (g).

(a) The object of this section is to substitute for section 62 of the Consolidation Act, relating to the completion of titles to lands by persons with decrees of adjudication or sale, an amended section, to be read and construed as if it had originally been section 62 of the Consolidation Act.

The amendment consists merely of a few slight alterations and additions required to adapt the enactment better to decrees of declarator and adjudication and decrees of sale, and also to explain more clearly the mode of completing the title where the person whose lands are adjudged or sold has not been infeft.

This section consolidates the provisions of 10 and 11 Vict. c. 48, sec. 19, which took effect from and after 30th September 1847, as regards lands not held burgage ; 21 and 22 Vict. c. 76, sec. 27, which took effect from and after 1st October 1858, authorizing the recording of the decrees themselves ; and 23 and 24 Vict. c. 143, secs. 3, 13, and 16, which took effect from and after 1st October 1860, extending these enactments to lands held burgage.

(b) Section 62 of the Consolidation Act, as amended by the Act of 1869, is printed *ante*, p. 144.

(c) From the mode in which the present section is substituted for the original section, it results not merely that its provisions are retrospective, drawing back to 31st December 1868, the date of the commencement of the Consolidation Act, but also that several of them, viz., those relating to entry with the superior, are repealed from and after 1st October 1874, the date of the commencement of the Conveyancing Act, by the provisions of the latter Act abolishing renewal of investiture, as well as by section 67 thereof, which ex-

pressly repeals all statutes, laws, and usages at variance with any of the provisions of the Act. In the same way the clauses relating to the manner of holding in feudal and burgage subjects respectively are virtually repealed, from and after the same date, by the provisions referred to, and by section 25 of the Conveyancing Act, which abolishes the distinction between feudal and burgage subjects.

(d) A decree of constitution and adjudication is obtained where the action has been directed against the apparent heir of the person in respect of whose debt or obligation the lands are adjudged; see section 60 of the Consolidation Act, *ante*, p. 138.

(e) "This Act" means the Consolidation Act, the commencement of which was 31st December 1868; see note (c) *supra*.

(f) A decree of declarator and adjudication is obtained where the action has been directed against a person holding the lands truly in trust.

(g) "Decree of judicial sale is truly an adjudication, proceeding at the instance of a creditor holding a real security over the estate where the debtor is insolvent; or, without insolvency, at the instance of the apparent heir of the debtor as trustee for the creditors and for his own eventual interest. The object of the action is to have the debtor's estate brought to public sale, and the price divided among the creditors. It differs from adjudication so far that there is no legal—no power or time left for redemption; it is an absolute adjudication to the purchaser."—Bell's Principles, sec. 833.

(h) Special provision is made for the case of heritable securities by section 129 of the Consolidation Act, as amended by section 65 of the Conveyancing Act, *post*, p. 427.

(i) The word "lands" here means all heritable subjects and rights other than heritable securities, as above excepted; see interpretation clause of the Consolidation Act (section 3, paragraph 1), *ante*, p. 301.

(k) In the case of adjudication, the decree is in favour of the adjudger; in the case of a judicial sale, it is in favour of the purchaser.

(l) That is to say, the decree is made equivalent to a conveyance by the person *in titulo* to grant such conveyance, any personal incapacity to grant it being disregarded.

(m) The part of the sixth section here referred to is now virtually repealed; see *ante*, pp. 25 and 26.

(n) Section 25 of the Conveyancing Act, *ante*, p. 329, abolishes the distinction between estates in land held feu and estates in land held burgage, *inter alia* in so far as regards the completion of titles, and subjects which were formerly held burgage may now be

feued out. The clauses here printed in small type must thus be regarded as virtually repealed or superseded from and after 1st October 1874; see note (c) *supra*.

(o) That is to say, where the person whose lands are adjudged or judicially sold was infeft, the adjudger or purchaser may record the decree, with warrant of registration thereon, in the appropriate register of sasines, in the manner prescribed by section 15 of the Consolidation Act with reference to conveyances generally; or, taking advantage of the provisions of section 17 of that Act, he may expedite a notarial instrument on the decree, if he does not desire to record the whole of the decree. The latter course will be most convenient where the decree includes several separate subjects the infeftments of which require to be recorded in separate registers as appropriate thereto. If the person desiring to take infeftment on the decree is not the original adjudger or purchaser, but has acquired right thereto by assignation or service, he will complete his title in the same way as if he had acquired right in the same way to an ordinary conveyance.

(p) That is to say, where the person whose lands are adjudged or judicially sold was not infeft, the decree is to operate as an assignation of such person's unrecorded conveyance; and the title may be completed in any of the ways authorized by sections 22 and 23 of the Consolidation Act, *ante*, p. 71 *et seq.*

(q) The clauses here printed in small type must be regarded as repealed or superseded from and after 1st October 1874; see note (c) *supra*. The infeftment of the adjudger or purchaser is now equivalent, under section 4 of the Conveyancing Act, to entry with the superior.

63. Section 125 of Titles to Land Consolidation Act, 1868, repealed.—*Completion of title of executors nominate, or disponent or legatee of an heritable security, or of heir where executors excluded (a).*—Section one hundred and twenty-five of "The Titles to Land Consolidation (Scotland) Act, 1868" (b), is hereby repealed, and in place thereof the following words shall be deemed and be taken to be the one hundred and twenty-fifth section of the last-recited Act, and the last-recited Act shall be read and construed as if the one hundred and twenty-fifth section thereof had been originally expressed in the following words (c), viz. :

Upon the death of any creditor in right of an

Page 422,
beginning of
section 63.

The introductory words of this section (viz., "*Section 125 of 'The Titles to Land Consolidation (Scotland) Act 1868' is hereby repealed, and in place thereof*") are included in the Schedule of enactments repealed by the Statute Law Revision Act 1883 (45 and 47 Vict. c. 39). But this is merely a verbal alteration, as the last-mentioned Act expressly provides that "where any enactment not comprised in the schedule has been repealed . . . by any enactment hereby repealed, such repeal . . . shall not be affected by the repeal effected by this Act."

heritable security (*d*) constituted by infestment as aforesaid (*e*) from which executors shall not have been excluded (*f*), who shall die leaving a testamentary or mortis causa deed or writing (*g*) naming executors, or disposing or bequeathing his moveable estate or disposing or bequeathing the security, it shall be competent for the executors duly confirmed, or for the disponees, or for the legatees, as the case may be, to complete a title thereto by a writ of acknowledgment to be granted in their favour by the debtor in the said security infest in the lands comprehended therein, in or as nearly as may be (*h*) in the form set forth in Schedule II. hereto annexed (*i*); and when the executors or disponees (being more than) one shall be appointed under such deed or writing for holding the moveable estate of the deceased in trust for the purposes of the deed or writing, and not wholly for their own beneficial interest, it shall be competent (when not expressly precluded by the terms of the deed or writing) to take the said writ in favour of the said executors or disponees, and the survivors or survivor of them; and where any creditor has died or shall die before the commencement of this Act (*k*) in right of such an heritable security, or where any creditor shall die thereafter in right of such an heritable security, from which executors shall have been excluded, it shall be competent for the heir (*l*) of such creditor to complete a title to the security by a writ of acknowledgment as aforesaid; and on such writ being recorded (*m*) in the appropriate register of sasines, the executors, disponees, or legatees, or heirs, as the case may be, in whose favour such writ has been granted, shall be vested with the full right of the creditor in such security, and shall be held to be entered with the superior in like manner and to the same effect as the original creditor himself (*n*).

(*a*) The object of this section is to substitute for section 125 of the Consolidation Act, relating to the completion of titles to heritable securities by writ of acknowledgment, an amended section, to be read and construed as if it had originally been section 125 of the Consolidation Act.

The amendment consists merely in the correction of a few verbal inaccuracies occurring near the beginning of the section. The original clause ran thus:—"who shall die leaving a testamentary or *mortis causa* deed or writing naming executors, or disposing or bequeathing his moveable estate to *disponees*, or disposing or bequeathing the security to *legatees*, it shall be competent for the *executors or disponees duly confirmed*, or for the legatees, as the case may be, to complete," &c. The present amended section, by transposing the words "duly confirmed" makes them applicable only to executors, and thus enables disponees to complete a title without the necessity of confirmation, which they may not be legally entitled to obtain.

By 8 and 9 Vict. c. 31, sec. 2, which took effect from and after 1st October 1845, it was made competent for the heir of a creditor in a heritable security to complete his title thereto by a writ of acknowledgment by the person duly infeft of whom the security was held; but further provisions were rendered necessary by section 117 of the Consolidation Act, which made heritable securities movable as regards the creditor's succession, unless executors were expressly excluded. The present section accordingly extends the use of the writ of acknowledgment to the case of any person who has acquired right to a heritable security under a testamentary or *mortis causa* deed or writing. Under sections 126 and 127 of the Consolidation Act the heir or such other person has the option of making up his title by means of a notarial instrument.

(b) Printed *ante*, p. 245.

(c) From the mode in which the present section is substituted for the original section, it results that its provisions are retrospective, drawing back to 31st December 1868, the date of the commencement of the Consolidation Act.

(d) As to the variety of deeds included by the words "heritable security," see the interpretation clause of the Consolidation Act. (section 3, paragraph 7), *ante*, p. 6. Section 30 of the Conveyancing Act, by providing that titles may be completed to real burdens upon land in the same manner as to heritable securities constituted by infeftment in favour of the creditor, renders the present enactment applicable to real burdens, securities by way of ground annual being, however, still heritable as regards succession.

(e) The words "as aforesaid" refer to the preceding sections of the Consolidation Act.

(f) As to the exclusion of executors, see section 117 of the Consolidation Act, *ante*, p. 221.

(g) As to testamentary or *mortis causa* deeds or writings, see section 20 of the Consolidation Act, *ante*, p. 63.

(h) There must be no real deviation from the form here prescribed.

(i) That is to say, annexed to the Consolidation Act. The schedule is printed, *ante*, p. 246.

(k) That is to say, 31st December 1868, "this Act" being the Consolidation Act.

(l) That is to say, either the heir-at-law or the heir entitled to succeed under the destination contained in the heritable security.

(m) With warrant of registration thereon; see section 33 of the Conveyancing Act, *ante*, p. 372.

(n) The debtor himself will be the superior in the case of the heritable security having expressed the holding to be only *de me*. In all other cases the superior here referred to will be the immediate superior of the debtor.

64. Section 127 of last-recited Act repealed.—*Executor nominate or donee mortis causa may complete title by notarial instrument* (a).—Section one hundred and twenty-seven (b) of the last-recited Act (c) is hereby repealed, and in place thereof the following words shall be deemed and be taken to be the one hundred and twenty-seventh section of the last-recited Act, and the last-recited Act shall be read and construed as if the one hundred and twenty-seventh section thereof had been originally expressed in the following words (d), viz. :—

Upon the death of any creditor in right of an heritable security (e) constituted by infestment as aforesaid (f), from which executors shall not have been excluded (g), and who shall die leaving a testamentary or mortis causa deed or writing (h) naming executors, or disposing or bequeathing his moveable estate, or disposing or bequeathing the security, it shall be competent for the executors, duly confirmed, or for the donees, or for the legatees, as the case may be, to complete a title thereto by expediting and recording (i) in the appropriate register of sasines an instrument under the hand of a notary public, in the form or as nearly as may be (k) in the form of Schedule KK. hereto annexed (l); and when such executors or donees, or legatees, being more than one, shall not be

Page 425,
beginning of
section 64.

The introductory words of this section (viz., "*Section 127 of the last-recited Act is hereby repealed, and in place thereof*") are included in the Schedule of enactments repealed by the Statute Law Revision Act 1883 (46 and 47 Vict. c. 39). But this is merely a verbal alteration, as the last-mentioned Act expressly provides that "where any enactment not comprised in the schedule has been repealed... by any enactment hereby repealed, such repeal... shall not be affected by the repeal effected by this Act."

entitled to such security wholly for their own beneficial interest, it shall be competent to take such notarial instrument in favour of such executors or disponees or legatees, and the survivors and survivor of them, unless such a destination be expressly excluded by the terms of the deed or writing; and where any creditor has died or shall die before the commencement of this Act (c), in right of such an heritable security, and leaving a mortis causa conveyance thereof, or of his heritable estate generally (n), or where any creditor shall die thereafter in right of such an heritable security from which executors shall have been excluded and leaving such a mortis causa conveyance, or a testamentary deed or writing within the meaning of the twentieth section (n) of this Act (c), it shall be competent to the grantee or legatee under such mortis causa conveyance or testamentary deed or writing to complete a title to the security by notarial instrument as aforesaid; and on such instrument being so recorded, the executors, disponees, legatees, or grantees, as the case may be, in whose favour such instrument has been expedited, shall be vested with the full right of the creditor in such security, and shall be held to be entered with the superior in like manner and to the same effect as the original creditor himself (o).

(a) The object of this section is to substitute for section 127 of the Consolidation Act, relating to the completion of titles to heritable securities by means of notarial instruments, an amended section, to be read and construed as if it had originally been section 127 of the Consolidation Act.

The amendment consists merely in the correction of a few verbal inaccuracies occurring near the beginning of the section. The original clause ran thus:—"who shall die leaving a testamentary " or *mortis causa* deed or writing naming executors, or disposing or " bequeathing his moveable estate to *disponees*, or disposing or be- " queathing the security to *legatees*, it shall be competent for the " *executors or disponees duly confirmed*, or for the legatees, as the " case may be, to complete," &c. The present amended section, by transposing the words "*duly confirmed*," makes them applicable only to executors, and thus enables disponees to complete a title without the necessity of confirmation, which they may not be legally entitled to obtain.

By 8 and 9 Vict. c. 31, sec. 4, which took effect from and after 1st October 1845, it was made competent for general disponees of a creditor in a heritable security to complete a title thereto by means of a notarial instrument; but further provision was rendered necessary by section 117 of the Consolidation Act, which made heritable securities moveable as regards the creditor's succession, unless executors were expressly excluded. The notarial instrument is accordingly made applicable by the present section to the case of executors or other persons acquiring right under a testamentary writing to the heritable security.

(b) Printed *ante*, p. 250.

(c) Viz., the Consolidation Act.

(d) From the mode in which the present section is substituted for the original section, it results that its provisions are retrospective, drawing back to 31st December 1868, the date of the commencement of the Consolidation Act.

(e) As to the variety of deeds included by the words "heritable security," see the interpretation clause of the Consolidation Act (section 3, paragraph 10), *ante*, p. 7. Section 30 of the Conveyancing Act, by providing that titles may be completed to real burdens upon land in the same manner as to heritable securities constituted by infeftment in favour of the creditor, renders the present enactment applicable to real burdens, securities by way of ground annual being, however, still heritable as regards succession.

(f) The words "as aforesaid" refer to previous sections of the Consolidation Act.

(g) As to the exclusion of executors, see section 117 of the Consolidation Act, *ante*, p. 221.

(h) As to testamentary or *mortis causa* deeds or writings, see section 20 of the Consolidation Act, *ante*, p. 63.

(i) With warrant of registration thereon; see section 33 of the Conveyancing Act, *ante*, p. 372.

(k) There must be no real deviation from the form here prescribed.

(l) That is to say, annexed to the Consolidation Act. The schedule is printed *ante*, p. 250.

(m) Such conveyance must be capable of conveying heritage according to the law which existed prior to 31st December 1868, as section 20 of the Consolidation Act allowing heritage to be be-

queathed in the same way as moveables does not apply to settlements executed by persons who had died before that date.

(n) Printed *ante*, p. 63.

(o) The debtor himself will be the superior in the case of the heritable security having expressed the holding to be only *de me*. In all other cases the superior here referred to will be the immediate superior of the debtor.

Page 428,
beginning of
section 65.

The introductory words of this section (viz., "*Section 129 of the last-recited Act is hereby repealed, and in place thereof*") are included in the Schedule of enactments repealed by the Statute Law Revision Act 1883 (46 and 47 Vict. c. 39). But this is merely a verbal alteration, as the last-mentioned Act expressly provides that "where any enactment not comprised in the schedule has been repealed . . . by any enactment hereby repealed, such repeal . . . shall not be affected by the repeal effected by this Act."

65. *Section 129 of last-recited Act repealed.—Adjudgers may complete their title by recording abbreviate or extract decree of adjudication (a).*—Section one hundred and twenty-nine (b) of the last-recited Act (c) is hereby repealed, and in place thereof the following words shall be deemed and be taken to be the one hundred and twenty-ninth section of the last-recited Act, and the last-recited Act shall be read and construed as if the one hundred and twenty-ninth section thereof had been originally expressed in the following words (d), viz. :—

In all cases of adjudication, whether for debt or in implement, or of constitution and adjudication whether for debt or in implement, in which the adjudger has obtained a decree of adjudication or of constitution and adjudication in the manner and to the effect provided by this Act (e), or in cases of declarator and adjudication, where the subjects contained in any such decree are heritable securities (f), it shall be competent for the adjudger to complete his title to such securities by recording (g) either the abbreviate of adjudication (h) or an extract of such decree in the appropriate register of sasines, in either of which cases he shall be in the same position as if an assignation of such heritable securities had been granted in his favour by the ancestor or person or creditor in trust or otherwise, and whether in life or deceased, whose estate is adjudged, and as if such assignation had been duly recorded in the appropriate register of sasines at the date of so recording such abbreviate or such extract decree (i).

(a) The object of this section is to substitute for section 129 of the Consolidation Act, relating to the completion of titles of adjudgers of heritable securities, an amended section, to be read and construed as if it had originally been section 129 of the Consolidation Act.

The amendment consists in including cases of declarator and adjudication (the proper procedure against a creditor holding a heritable security truly in trust), and in giving to a recorded abbreviate of adjudication the same effect as is given to a recorded extract decree. The original clause provided that the recording of an abbreviate should have the same effect as if at the date thereof the adjudger had been entered and infeft on a charter of adjudication.

With these alterations the present section consolidates the provisions of 8 and 9 Vict. c. 31, sec. 3, which took effect from and after 1st October 1845, authorizing the recording of an abbreviate; and 21 and 22 Vict. c. 76, sec. 27, which took effect from and after 1st October 1858, authorizing the recording of an extract decree of adjudication.

(b) Printed *ante*, p. 253.

(c) Viz., the Consolidation Act.

(d) From the mode in which the present section is substituted for the original section, it results that its provisions are retrospective, drawing back to 31st December 1868, the date of the commencement of the Consolidation Act.

(e) Viz., by sections 59, 60, 61, and 62 (as amended) of the Consolidation Act, *ante*, p. 137 *et seq.* and p. 418.

(f) As to the variety of deeds included by the words "heritable securities," see the interpretation clause of the Consolidation Act (section 3, paragraph 10), *ante*, p. 7. Section 30 of the Conveyancing Act, by providing that titles may be completed to real burdens upon land in the same manner as to heritable securities constituted by infeftment in favour of the creditor, renders the present enactment applicable to real burdens.

(g) With warrant of registration thereon; see section 33 of the Conveyancing Act, *ante*, p. 372.

(h) An abbreviate of adjudication is an abridgment of the decree required by the Act 1661, c. 31, to be signed by the extractor and recorded in the register of abbreviates of adjudications within sixty days of its date.

(i) This enactment appears applicable to all cases, whether the person whose right to the security has been adjudged was infeft or not. If, however, it should be doubted whether the section contemplates the case of such person not being infeft, the decree may be

regarded as equivalent to an assignation of an unrecorded conveyance, and the title accordingly completed by means of a notarial instrument expedite under section 23 of the Consolidated Act, *ante*, p. 76.

66. Schedules to be part of Act (a).—The schedules annexed to this Act, and the directions therein contained, and notes thereto appended, shall have the same effect as if they were contained in the body of this Act.

(a) The object of this section is to give statutory effect to the directions and notes contained in the schedules. The section does not necessarily make the use of the forms imperative; see note (*m*) to section 41, *ante*, p. 385. But it renders very inexpedient any deviation from the forms provided in the schedules.

67. Repeal of Acts, &c. (a).—All statutes, laws, and usages at variance with any of the provisions of this Act are hereby repealed.

(a) The object of this section is to prevent effect being denied to any of the provisions of the Act, on the technical ground that there is no express repeal of a statute or usage at variance with such provisions. Thus, although the form of testing clause given by the schedules to the Consolidation Act to notarial instruments is a statutory requisite, the use of the new mode of attestation introduced by section 38 of the Conveyancing Act is clearly rendered competent by the present section.

68. Saving clause (a).—Nothing herein contained shall affect any action now in dependence, or that shall be instituted before the commencement of this Act (*b*).

(a) The object of this section is to prevent any of the provisions of the Act, especially those which are retrospective, being pleaded in actions raised before the commencement of the Act.

(b) Viz., 1st October 1874.

SCHEDULES.

- SCHEDULE A. Printed *ante*, p. 312.
SCHEDULE B. Printed *ante*, p. 322.
SCHEDULE C. Printed *ante*, p. 328.
SCHEDULE D. Printed *ante*, p. 331.
SCHEDULE E. Printed *ante*, p. 336.
SCHEDULE F. Printed *ante*, p. 347.
SCHEDULE G. Printed *ante*, p. 349.
SCHEDULE H. Printed *ante*, p. 372.
SCHEDULE I. Printed *ante*, p. 385.
SCHEDULE J. Printed *ante*, p. 387.
SCHEDULE K. Printed *ante*, p. 395.
SCHEDULE L. No. 1. Printed *ante*, p. 397.
 No. 2. Printed *ante*, p. 399.
SCHEDULE M. Printed *ante*, p. 401.
SCHEDULE N. Printed *ante*, p. 406.
SCHEDULE O. Printed *ante*, p. 417.

20 & 21 VICTORIÆ REGINÆ,

CAP. XXVI.

*An Act to provide for the Registration of Long Leases
(a) in Scotland, and Assignations thereof (b).—
[10th August 1857 (c).]*

[“The Registration of Leases (*Scotland*) Act, 1857.”]

(a) Although the Act does not expressly mention sub-leases, it is thought that a sub-lease, by a party *in titulo* to grant it, must be held as comprehended in the general word “lease.” This view is sanctioned by the general usage following upon the Act, quite as many sub-leases as leases having been registered under the provisions of the Act.

(b) The main object of this Act is to place long leases as far as possible on the same footing as other land rights. With this view, the Act authorizes long leases, and assignations, &c., thereof, to be recorded in the registers of sasines appropriate to other land rights, and renders such recording equivalent to possession under the lease. The Act thus remedies the great inconvenience which was found to arise from the want of any means of making the tenant’s interest under a long lease an effectual security to creditors, without a manifest change of possession.

(c) The Act took effect from and after the date of its passing.

BE it enacted by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. *Long leases, and assignations thereof, registerable in Register of Sasines.*—From and after the passing of this Act (a), it shall be lawful to record in the General

Register of Sasines in *Scotland*, or in the particular register of sasines for the district in which the lands and heritages leased are situated (*b*), probative (*c*) leases (*d*), whether executed before or after the passing of this Act, for a period of thirty-one years, and for any greater number of years that shall be stipulated (*e*), of lands and heritages in *Scotland* other than lands and heritages (*f*) held by burgage tenure, and to record in the several burgh registers of sasines probative (*c*) leases (*d*) for the period foresaid (*e*) of lands and heritages within the burgh for which such register is kept, and (*f*) held by burgage tenure, and to record respectively in the register in which any such lease as aforesaid shall have been registered the assignments, and assignments in security of such lease, and translations thereof, all herein-after mentioned (*g*).

(*a*) Viz., 10th August 1857.

(*b*) Under the Lands Registers Act of 1868 (printed *post*), the whole particular registers of sasines are abolished, and there is now only one register, writs requiring to be recorded in the division thereof applicable to the county in which the lands and heritages are situated.

(*c*) As to the formalities of execution now required to make a writ probative, see section 38 of the Conveyancing Act, *ante*, p. 378.

An improbative lease, though validated *rei interventu* so as to form a binding contract as against both landlord and tenant, does not appear to come within the provisions of this Act.

(*d*) Under section 18, which relates to leases granted after the date of the Act, of lands not held burgage, the name of the lands of which the subjects let consist or form a part must be set forth in the lease; and the extent of the subjects let, unless mines or minerals, must be set forth, and must not exceed fifty acres.

As to sub-leases, see note (*a*), *ante*, p. 432.

(*e*) Under section 17, leases containing an obligation upon the granter to renew the same from time to time at fixed periods, or upon the termination of a life or lives, or otherwise, are to be deemed leases within the meaning of the Act, and registerable as such, provided such leases shall by the terms of such obligation be renewable from time to time so as to endure for a period of thirty-one years or upwards.

(*f*) Here read as inserted the words "which prior to 1st October 1874 were." Section 25 of the Conveyancing Act, *ante*, p. 359, abolishes the distinction between estates in land held burgage and estates in land held feu, but directs that writs affecting land which immediately prior to the commencement of that Act was held burgage shall still be recorded in the burgh register of sasines.

(*g*) One object of this clause was to obviate the necessity of searches in both the general and the particular register of sasines. The Land Registers Act of 1868 has, however, rendered this superfluous; see note (*b*) *supra*.

2. *Recorded leases effectual against singular successors in the lands let.*—Leases registerable under this Act (*a*), and valid and binding as in a question with the granters thereof (*b*), which shall have been duly recorded, as herein (*c*) provided, at or subsequent to the date of entry therein stipulated, shall, by virtue of such registration, be effectual against any singular successor in the lands and heritages thereby let, whose infeftment is posterior in date to the date of such registration: Provided always, that, except for the purposes of this Act, it shall not be necessary to record any such lease as aforesaid, but that all such leases which would, under the existing law prior to the passing of this Act, have been valid and effectual against any such singular successor as aforesaid, shall, though not recorded, be valid and effectual against such singular successor, as well as against the granters of the said leases (*d*).

(*a*) As to what leases are registerable, see sections 1, 17, and 18.

(*b*) The following leases, being valid and binding as in a question with the granters thereof, are by this enactment made effectual against singular successors, provided they are registerable under the Act and have been duly recorded, although they would not, under the Act 1449, c. 18, be effectual against such successors, viz., (1) leases on which no possession has followed, (2) leases of indefinite duration, not less than thirty-one years, (3) leases in perpetuity, (4) leases in which the rent is elusory, (5) leases in which services take the place of rent, and (6) leases in payment and security of debt.

(*c*) See section 15, *post*, p. 452.

(*d*) Under this proviso, a lessee, who has obtained lawful possession under a lease effectual at common law, appears to be secured against a lessee, who has recorded his lease after the date at which such possession has been obtained.

3. Assignations of recorded leases.—When any such lease as aforesaid (*a*) shall have been recorded as herein (*b*) provided, it shall be lawful for the party in right of such lease (*c*), and whose right is recorded in terms of this Act (*d*), but in accordance always with the conditions and stipulations of such lease, and not otherwise (*e*), to assign the same, in whole or in part, by assignation, in the form as nearly as may be (*f*) of the Schedule (A.) to this Act annexed; and the recording of such assignation shall fully and effectually vest the assignee with the right of the granter thereof in and to such lease to the extent assigned (*g*): Provided always, that such assignation shall be without prejudice to the right of hypothec, or other rights of the landlord.

(*a*) Viz., in section 1, *ante*, p. 432.

(*b*) Viz., in section 15, *post*, p. 452.

(*c*) Viz., either the original lessee or the party deriving right from him, such lease and right thereto being recorded.

(*d*) An assignee thus cannot grant a registerable assignation till he has recorded his own assignation.

(*e*) It is thus unnecessary in an assignation to set forth or refer to the conditions and stipulations contained in the lease; the assignee has no higher right than the cedent.

(*f*) There should be no actual deviation from the form here provided.

(*g*) Under section 16, *post*, p. 453, the registration of an assignation completes the right, to the effect of establishing a preference as effectually as if the assignee had entered into possession at the date of registration.

SCHEDULE (A.)

FORM OF ASSIGNATION OF LEASE.

I, *A.B.*, [*designation*,] in consideration of the sum of _____ now paid to me [*or otherwise, as the case may be*], assign to *C.D.* [*designation*] (*a*) a lease, dated _____, and recorded in the _____ Register of Sasines at _____, of date _____, granted by *E.F.* [*designation*] in my favour [*or if not in assigner's favour, name and design grantee*], of [*shortly mention subjects*] in the parish of _____ and county of _____ [and (*when the assigner is not the grantee in the lease*) my title to which is recorded in the said register, of date _____] (*b*), [but (*where the lease is assigned in part only*) in so far only as regards the following portion of the subjects leased; viz. (*specify particularly the portion*),] with entry as at [*term of entry*]. And [*where sub-lease*] I assign the rents from [*term*] (*c*); and I grant warrandice; and I bind myself to free and relieve the said *C.D.* of all rents and burdens due to the landlord or others at and prior to the term of entry in respect of said lease; and I consent to registration for preservation and execution (*d*).

[*Testing clause in common form*] (*e*).

(*a*) Here insert any special destination that the assignee may desire.

(*b*) It is not necessary to set forth the series of titles under which the assigner acquired right.

(*c*) That is to say, where a sub-lease has been granted, the assigner of the original lease assigns the rents payable by the sub-lessee.

(*d*) As to the import of the clauses in this schedule, see section 20, *post*, p. 456.

(*e*) As to the requisites of the testing clause, see section 38 of the Conveyancing Act, *ante*, p. 378.

4. *Assignations in Security*.—It shall be lawful for the party (*a*) in right of any such lease recorded as

aforesaid (b), and whose right thereto is recorded in terms of this Act, but in accordance always with the conditions and stipulations of such lease, and not otherwise (c), to assign the same, in whole or in part, in security for the payment of borrowed money, or of annuities, or of provisions to wives or children, or in security of cash credits or other legal debt or obligation, in the form as near as may be (d) of the Schedule (B.) to this Act annexed; and the recording of such assignation in security shall complete the right thereunder; and such assignation in security so recorded shall constitute a real security over such lease to the extent assigned (f).

(a) Viz., either the original lessee or a party deriving right from him, such lease and right thereto being recorded.

(b) As to recording, see sections 1 and 15, pp. 432 and 452

(c) It is unnecessary in the bond and assignation in security to set forth or refer to the conditions and stipulations contained in the lease.

(d) There should be no actual deviation from the form here provided.

(e) Under section 16, the registration of an assignation in security completes the right, *post*, p. 453, to the effect of establishing a preference as effectually as if the assignee in security had entered into possession at the date of registration.

(f) It seems competent to constitute a security, not merely in the mode provided by this section, but also, under section 3, by an assignation *ex facie* absolute, with a separate deed by the creditor acknowledging that the assignation is truly in security only; see opinion of Lord Justice-Clerk in *Rodger v. Crawford*, 9th Nov. 1867, 6 Macph. 24.

SCHEDULE (B.)

FORM OF BOND AND ASSIGNATION IN SECURITY.

I, A.B., [*designation*] bind myself, my heirs and executors, without the necessity of discussing them in their order, to make payment, at the term of [*date and place of payment*], to C.D. [*designation*] or his heirs,

executors, or assignees (a), of the sum of _____, being money borrowed by me from him, [or as a provision to the said C.D., or of the yearly annuity of _____ during his lifetime, *as the case may be*], with the interest of the said capital sum at the rate of _____ per cent. per annum, payable by equal portions half-yearly at Whitsunday and Martinmas, beginning the first payment at _____ (b). And, in security of the personal obligation before written, I assign to the said C.D. and his foresaids, heritably but redeemably, as after mentioned, yet irredeemably in the event of a sale by virtue hereof, a lease of [*shortly mention subjects leased*] in the parish of _____ and county of _____, which lease was granted by E.F. [designations], of date _____, and recorded [*insert register, with date of recording*], and [*where cedent not the original lessee*], my title to which is registered therein [date of recording] (c); [but (*where only a portion of the subjects are assigned*) in so far only as regards the following portion of the subjects leased; viz. (*specify particularly the portion*)]. And I assign the rents; and I assign the writs; and I grant warrandice; and I reserve power of redemption; and I oblige myself and my foresaids for the expenses of assigning and discharging this security; and, on default of payment, I grant power of sale; and I consent to registration for preservation and execution (d).

[*Testing clause (e).*]

(a) Under section 117 of the Consolidation Act, *ante*, p. 221, the creditor's succession will be moveable, unless executors are expressly excluded.

(b) The form of personal obligation here provided differs somewhat from the usual style of a bond for money, and omits the obligation for payment of a penalty in the event of failure to pay principal and interest. The adoption of the usual style of personal obligation would probably not be incompetent, but the assignation following it must be in strict conformity to the schedule.

(c) It is not necessary to set forth the series of titles under which the cedent acquired right.

(d) As to the import of the clauses in the schedule, see section 20, *post*, p. 456.

Where the security extends over house property or buildings, a clause shall be inserted providing for the insurance of them against loss by fire.

(e) As to the requisites of the testing clause, see section 38 of the Conveyancing Act, *ante*, p. 378.

5. *Where party presenting for registration not original lessee or assignee (a).*—Where the party in right (b) of any such lease or assignation in security as aforesaid is not the original lessee in such lease, or the original assignee in such assignation in security, he shall, before presenting such lease or assignation in security for registration, expedite an instrument, under the hand of a notary public, in the form or as nearly as may be (c) of Schedule (C.) to this Act annexed; and the keeper of the register, on such notarial instrument being produced to him, but not otherwise, shall thereupon record such lease or assignation in security, together with the said instrument (d).

(a) This section refers merely to leases and assignations in security which have not been recorded.

(b) As heir, assignee, or general disponee.

(c) There should be no actual deviation from the form here provided.

(d) A warrant of registration requires to be written on the lease or assignation in security, and the notarial instrument to be docquetted with reference thereto.

SCHEDULE (C.)

FORMS OF NOTARIAL INSTRUMENTS IN FAVOUR OF A PARTY NOT THE ORIGINAL GRANTEE.

No. 1.—*Case of Lease.*

Be it known, That by lease, dated _____, A.B.
[*designation*] let to C.D. [*designation*] that piece of

ground [or as the case may be, shortly describing the property leased] in the parish of _____ and county of _____, to which lease *E.F.* [designation] has made up title by service (a) as eldest son [or as the case may be] and heir of the said *C.D.*, dated [insert date of service] before the [specify the Court before which the heir has been served], and duly retoured to Chancery (b), [or, as the case may be, as general disponent or assignee of the said *C.D.* in virtue of (here mention the writs or decreets instructing the right with the dates thereof, and, if recorded, the register, and date of recording)*] (c): Wherefore this instrument is taken by the said *E.F.* in the hands of *G.H.* [designation of notary public], in terms of the Registration of Leases (Scotland) Act, 1857.

[Testing Clause (d).]

* NOTE.—If the person in whose favour the instrument is taken is not the heir or disponent of the original grantee, but of one who has acquired right to the lease or assignation in security, here specify shortly the series of titles by which the predecessor acquired the right (e).

(a) The service will, of course, be a general service. Service was never required to transmit the right to a lease; but it is here introduced for the purpose of showing on record the right of the heir or party deriving right from him.

(b) As retours were abolished in the year 1847 (see section 27 of the Consolidation Act, *ante*, p. 90), the words "duly retoured to Chancery" must be omitted, and the clause may run thus:—"as eldest son and nearest and lawful heir in general of the said *C.D.*, conform to decree of general service obtained before the Sheriff of _____ dated the _____ day of _____, and recorded in Chancery on the _____ day of _____."

(c) The whole progress of titles must be set forth, so that there may appear on the record a complete statement of the mode by which the party expeding the instrument acquired right to the unrecorded lease or assignation in security. But it is not necessary to set forth assignations creating latent securities which have been redeemed by a reconveyance—*Rodger v. Crawfords*, 9th Nov. 1867, 6 Macph. 24.

(d) As to the testing clause, see note (d), *ante*, p. 56.

(e) Difficult questions may be raised as to the manner in which this direction is to be complied with, in the case of there having intervened an heir who has not obtained a decree of service, or an assignee between two heirs; see Mowbray's Hendry's Styles, p. 338.

SCHEDULE (C.)

No. 2.—*Case of Assignment in Security.*

Be it known, That by bond and assignation in security, of date *C.D.* [*designation*] assigned to *J.K.* [*designation*], in security of a sum of [*or as the case may be*], a lease granted by *A.B.* [*designation*] of [*shortly describe the subjects leased*], in the parish of _____ and county of _____, which lease is dated _____, and recorded [*register, and date of recording*], to which assignation in security *E.F.* [*designation*] has acquired right as eldest son [*or as the case may be*] and heir of the said *J.K.*, &c. [*as in form No. 1.*]

Page 441 Schedule (C), No. 2.

It is thought that section 117 of the Consolidation Act, *ante*, p. 221, rendering heritable securities moveable *quoad* the succession of the creditor, unless executors are expressly excluded, is applicable to securities over recorded leases; see interpretation clause, *vide* "heritable security" and "lands," *ante*, pp. 7 and 8. If this be so, the forms provided by the Consolidation Act for the completion of the title of executors to heritable securities may competently be used to complete the title of executors to bonds and assignations in security over recorded leases.

6. *Translation of Assignations in Security.*—*Creditor's entry to possession in default of payment.*—All such assignations in security as aforesaid (a) shall, when recorded, be transferable, in whole or in part, by translation, in the form as nearly as may be (b) of the Schedule (D.) to this Act annexed; and the recording (c) of such translation shall fully and effectually vest the party in whose favour it was granted with the right of the granter thereof in such assignation in security to the extent assigned; and the creditor or party in right of such assignation in security, without prejudice to the exercise of any power of sale therein contained (d), shall be entitled, in default of payment of the capital sum for which such assignation in security has been granted, or of a term's interest thereof, or of a term's annuity, for six months after such capital sum or term's interest or annuity shall have fallen due, to apply to the Sheriff for a warrant to enter on posses-

sion of the lands and heritages leased; and the Sheriff, after intimation to the lessee for the time being, and to the landlord, shall, if he see cause, grant such warrant, which shall be a sufficient title for such creditor or party to enter into possession of such lands and heritages, and to uplift the rents from any subtenants therein, and to sub-let the same, as freely and to the like effect as the lessee might have done: Provided always, that no such creditor or party, unless and until he enter into possession as aforesaid, shall be personally liable to the landlord in any of the obligations and prestations of the lease.

(a) Viz., in section 4, *ante*, p. 436.

(b) There should be no actual deviation from the form here provided.

(c) With warrant of registration thereon; see note (b) to section 15, *post*, p. 452.

(d) As to the exercise of the power of sale, see note (b) to section 20, *post*, p. 457.

SCHEDULE (D.)

FORM OF TRANSLATION OF ASSIGNATION IN SECURITY.

I, *A.B.*, [*designation*], in consideration of the sum of now paid to me [*or as the case may be*], assign and transfer to *C.D.* [*designation*] (*a*), a bond and assignation in security for the principal sum of [*or as the case may be*], granted by *E.F.* [*designation*] in my favour, [*or, if not in granter's favour, name and design the party in whose favour granted*], dated and recorded [*register and date of recording*] of and over a lease granted by *G.H.* [*designation*] of [*shortly describe subjects leased*], in the parish of , and county of , which lease is dated , and is recorded in the said register of date [*and (if the granter is not the assignee in said bond)* my title to which bond and

assignation in security is recorded in said register [date of recording (b)], [but (where the translation is partial) only to the extent of (insert sum), and to the effect of giving *pari passu* preference (c) to the said C.D. over the said lease with me, my heirs and assigns, as regards the remainder of the said principal sum and corresponding interest], with the interest from [date].
 [Testing clause (d).]

(a) Here insert such destination as C.D. may desire. Under section 117 of the Consolidation Act, *ante*, p. 221, his succession will be moveable, unless executors are expressly excluded.

(b) It is not necessary to set forth the series of titles under which the granter acquired right.

(c) It is, of course, quite competent to make the part which is assigned preferable to the remaining part of the sum, or to postpone it, as may be arranged.

(d) As to the requisites of the testing clause, see section 38 of the Conveyancing Act, *ante*, p. 378.

7. Heir may complete title by writ of acknowledgment.—It shall be competent for the heir of any party who shall have died vested in right of any such lease or assignation in security, recorded as aforesaid (a), to make up his title thereto by a writ of acknowledgment from the proprietor infeft in the lands and heritages leased by such lease, or from the party appearing on the register as in absolute right of such lease of or over which such assignation in security has been granted, respectively, in the form as nearly as may be (b) of the Schedule (E.) to this Act annexed; and the recording (c) of such writ in the register in which such lease or assignation in security is registered (d) shall complete the title of such heir to such lease or assignation in security aforesaid: Provided always, that no defect in the title of the proprietor or party granter of such writ shall affect the right or title of such heir (e).

(a) Viz., in sections 1, 4, and 5.

(b) There should be no actual deviation from the form here provided.

(c) With warrant of registration thereon; see note (b) to section 15, *post*, p. 453.

(d) See notes (b) and (g) to section 1, *ante*, pp. 433 and 434.

(e) This provision does not protect the heir against the consequences of defective *right* in the grantor of the writ of acknowledgment, but only against defects in his title. The writ of acknowledgment, however, is required, not for the purpose of vesting a right in the heir, but merely for the purpose of completing his title, as at common law the heir succeeds to a lease without the necessity of any procedure, form, or deed.

SCHEDULE (E.)

FORM OF WRITS OF ACKNOWLEDGMENT.

No. 1.—*Acknowledgment of Heir in Lease.*

I, *A.B.*, [*designation*], proprietor infest in the lands of *C.*, by infestment (*a*) recorded [*register, and date of recording*], acknowledge *D.E.*, [*designation*], as [*specify relationship*], and heir of the deceased *F.G.*, [*designation*], to be in right of a lease granted by *H.J.* [*designation*] of [*shortly mention subjects*] in the parish of _____ and county of _____, being a portion of the said lands of *C.*, which lease is dated _____ and recorded [*register, and date of recording*], and [*where the deceased not the original lessee*] the title of the said *F.G.* being recorded in the said register of date _____^{(b).}
[*Testing clause (c).*]

(a) It is well to specify the deed or instrument, the recording of which operated the infestment.

(b) It is not necessary to set forth the series of titles under which he acquired right.

(c) As to the requisites of the testing clause, see section 38 of the Conveyancing Act, *ante*, p. 378.

No. 2.—*Acknowledgment of Heir of Creditor in
Assignment in Security.*

I, *A.B.*, [*designation*], being in right of a lease granted by *C.D.* [*designation*] of [*shortly specify subjects*] in the parish of _____ and county of _____, which lease is dated _____, and recorded [*register, and date of recording*] and [*where granter not the lessee named in the lease*] my title to which is recorded in said register [*date of recording*] (*a*), acknowledge *E.F.* [*designation*], as [*specify relationship*], and heir of the deceased *G.H.* [*designation*], to be in right of a bond and assignment in security for the sum of _____ [*or as the case may be*] granted by *I.K.* [*designation*] over said lease, which bond and assignment in security is dated _____ and recorded in the said register on [*date*], and [*where the deceased not the original creditor*] the title of the said *G.H.* to which bond and assignment in security is recorded in the said register on [*date*] (*a*).

[*Testing clause (b).*]

(*a*) It is not necessary to set forth the series of titles under which he acquired right.

(*b*) As to the requisites of the testing clause, see section 38 of the Conveyancing Act, *ante*, p. 378.

8. *Heir or Disponee may complete Title by recording Notarial Instrument.*—It shall be competent to the heir who shall have been served by general or special service (*a*), or to the general disponee of any party who shall have died fully vested (*b*) in right of any such lease or assignment in security, recorded as afore-said (*c*), to expedite a notarial instrument in the form as nearly as may be (*d*) of the Schedule (F.) to this Act annexed; and the recording (*e*) of such instrument in the register in which such lease is recorded (*f*) shall complete the title of such heir or disponee to such lease or assignment in security.

Page 445
See margin
note, ante

(a) The service ought in all cases to be a general service, a special service being appropriate only to feudal subjects. The reference to a special service is a mistake, which may be explained in the following way:—Under the law prior to the Service of Heirs Act of 1847 a special service implied a general service in the same character, so that, had the law not been altered by that Act, a special service, obtained for the purpose of completing a title to feudal subjects, might have been used for the further purpose of completing a title to leasehold subjects under the present section. The framers of the present Act seem, however, to have overlooked a provision of the Act of 1847, re-enacted by section 47 of the Consolidation Act, to the effect that no special service shall imply a general service to the deceased in the same character, except as to the particular lands embraced in the service. When the Act was first passed, great difficulties were expressed as to the competency of service in the case of leasehold subjects; see Shaw's edition of Bell's Com., ii. 901; Hunter on Landlord and Tenant, 4th edition, p. 515; and Journal of Jurisprudence, ii. 233. The only solution of these difficulties is, that service was required by the Act, not for the purpose of vesting a right in the heir, but merely for the purpose of completing his title, and that through the inadvertence above mentioned, the framers of the Act contemplated the possibility of a special service being occasionally used.

(b) If the heir of the person last vested has died without completing his title, he may be passed over by the next heir, who may serve himself heir to the person last vested.

(c) As to recording, see sections 1 and 15, p. 432 and 452.

(d) There should be no actual deviation from the form here provided; but as the schedule is applicable to a considerable number of different cases, a good deal of latitude must be allowed in adapting it to each.

(e) With warrant of registration thereon; see note (b) to section 15, *post*, p. 453.

(f) See notes (b) and (g) to section 1, *ante*, pp. 433 and 434.

SCHEDULE (F.)

FORM OF NOTARIAL INSTRUMENT IN FAVOUR OF HEIR IN
RECORDED LEASE OR ASSIGNATION IN SECURITY, OR
OF TRUSTEE ON SEQUESTERED ESTATE.

No. 1.—*Case of Lease (a).*

Be it known, That by lease dated _____,
A.B. [*designation*] let to C.D. [*designation*] that piece

of ground [or as the case may be, shortly describing the property leased], in the parish of _____ and county of _____, which lease is recorded [register, and date of recording], and to which *E.F.* [designation] has made up title by service as [specify relationship], and heir of the said *C.D.*, dated the [insert date of service], before the [specify the Court before which the heir has been served], and duly retoured to Chancery (*b*), [or, as the case may be], as general disponent of the said *C.D.*, [or as heir (or general disponent) of *L.M.* (*c*) in an assignation by the said *C.D.* of date _____ (*d*), or as trustee confirmed on the sequestrated estate of the said *C.D.* (*e*), in virtue of (here mention the writs or decreets, instructing the rights, with the dates thereof, and if recorded, the register, and date of recording) (*f*)]. Whereupon this instrument is taken by the said *E.F.*, in the hands of *G.H.* [designation of notary public], in terms of the "Registration of Leases (Scotland) Act, 1857."

[Testing clause (*g*).]

(*a*) As to the various forms which this instrument may take, in order to be adapted to the various cases contemplated by the Act, reference is made to Mowbray's Hendry's Styles, p. 351 *et seq.*

(*b*) As retours were abolished in the year 1847, (see section 27 of the Consolidation Act, *ante*, p. 90), the words "duly retoured to Chancery" must be omitted, and the clause may run thus—"as eldest son and nearest and lawful heir in general of the said *C.D.*, conform to decree of general service obtained before the Sheriff of _____ on the _____, and recorded in Chancery on the _____ day of _____."

(*c*) That is to say, the grantee in the assignation.

(*d*) See section 9, *post*, p. 448, as to the mode of completing the title where the assignee has died without recording his assignation.

(*e*) See section 11, *post*, p. 449, as to the mode in which a trustee on a sequestrated estate requires to complete his title.

(*f*) It does not seem necessary to deduce the title in its course from the original lessee to the party last fully vest in the lease, as that part of the progress is already shown on record, and may be ascertained on a reference to the last recorded writ. The "writs or

decreets instructing the rights " here required to be mentioned are those instructing the rights of the party expediting the instrument, who will sufficiently instruct his rights by deducing his title from the party last fully vest.

(g) As to the testing clause, see note (d), *ante*, p. 56.

SCHEDULE (F.)

No. 2.—*Case of Assignment in Security (a).*

Be it known, That by bond and assignation in security, of date (b) *C.D.* [*designation*] assigned to *I.K.* [*designation*] in security of a sum of [or as the case may be], a lease granted by *A.B.* [*designation*] of [*shortly describe the subjects leased*] in the parish of _____ and county of _____, dated _____, and recorded [*register, and date of recording*], to which bond and assignation in security *E.F.* [*designation*] has acquired right as [*specify relationship*], and heir of the said *I.K.* &c. [*as in form No. 1.*]

(a) As to the variations required to adapt this form to the various cases contemplated by the Act, reference is made to Mowbray's *Hendry's Styles*, p. 373 *et seq.*

(b) The date of recording should also be mentioned, although it is not required by the schedule.

9. *Where assignee has died without recording assignation, mode of making up title.*—Where any assignation, assignation in security, or translation granted in pursuance of this Act shall not have been registered as aforesaid in the lifetime of the grantee in such writ respectively, it shall be competent to the heir or general disponent of such grantee to make up his title by expediting an instrument under the hand of a notary public in the form, as nearly as may be, of the Schedule (F.) to this Act annexed (a); and the keeper of

the register, on such notarial instrument being presented to him, but not otherwise, shall thereupon record such assignation, assignation in security, or translation, together with the said instrument (*b*).

(*a*) The schedule is printed *ante*, pp. 446 and 448.

(*b*) A warrant of registration requires to be written on the assignation, assignation in security, or translation, as the case may be, and the notarial instrument to be docketed with reference thereto.

10. *Adjudgers to complete right by recording abbreviate.*—When an adjudication (*a*) of any such lease or assignation in security recorded as aforesaid shall have been obtained against the party vested in the right thereof respectively, or against the heir of such party, the recording (*b*) of the abbreviate of adjudication in the register in which the lease is recorded (*c*) shall complete the right of the adjudger to such lease or assignation in security.

(*a*) As to adjudications generally, see sections 59. 60, 61, 62, and 129 of the Consolidation Act, *ante*, p. 137 *et seq.* and p. 253, as amended by sections 62 and 65 of the Conveyancing Act, *ante*, pp. 418 and 428.

(*b*) With warrant of registration; see note (*b*) to section 15, *post*, p. 453.

(*c*) See notes (*b*) and (*g*) to section 1, *ante*, pp. 433 and 434.

11. *Trustees on sequestrated estate may be entered on register.*—It shall be lawful for the trustee on the sequestrated estate of any party in right of any such lease or assignation in security as aforesaid to expedite a notarial instrument in the form as nearly as may be of the Schedule (F.) to this Act annexed (*a*); and the recording (*b*) of such instrument in the register in which such lease is recorded (*c*) shall complete the right of such trustee to such lease or assignation in security.

(*a*) Printed *ante*, pp. 446 and 448.

(b) With warrant of registration thereon; see note (b) to section 15, *post*, p. 453.

(c) See notes (b) and (g) to section 1, *ante*, pp. 433 and 434.

12. *Preferences regulated by date of recording transfer.*—All such leases (a) executed after the passing of this Act (b), and all assignments, assignments in security of any such lease recorded as aforesaid, and translations thereof, and all adjudications of such leases recorded as aforesaid, or assignments in security, shall in competition be preferable according to their dates of recording (c).

(a) See section 1, *ante*, p. 432.

(b) Viz., 10th August 1857.

(c) The object of this section seems to be to regulate the preferences of recorded rights *inter se*; while their preference in competition with other rights is regulated by section 16, *post*, p. 453.

13. *Renunciations and discharges to be recorded.*—On the production to the keeper of the register of a renunciation of any such lease as aforesaid (a) recorded therein, or of a discharge of any such assignment in security as aforesaid (b) therein recorded, by or on behalf of the party appearing on the register as in right of such lease or assignment in security (c), which renunciation or discharge may be (d) in the form of Schedules (G.) and (H.) respectively to this Act annexed, and may be endorsed (e) on such lease or assignment in security, he shall forthwith duly record the same (f).

(a) Viz., in section 1, *ante*, p. 432.

(b) Viz., in section 4, *ante*, p. 436.

(c) If the party in right of the lease does not appear on the register as in such right, he must either complete his own title before executing a renunciation, or else get the person who appears

on the register as in right of the lease to execute the renunciation, to which he himself should be a consenting party.

(d) The use of the forms given in the schedule is not imperative.

(e) It is left optional to endorse the renunciation or discharge on the lease or assignation in security, or to make use of a separate deed.

(f) The renunciation or discharge must have a warrant of registration endorsed thereon; see note (b) to section 15, *post*, p. 453.

SCHEDULE (G.)

RENUNCIATION OF LEASE.

I, *A.B.* [*designation*] renounce as from the term of in favour of *C.D.* [*designation*] a lease granted by the said *C.D.* [*or as the case may be*] of [*shortly set forth subjects*] in the parish of and county of , which lease is dated and recorded [*register, and date of recording*], and [*where the party renouncing not the original lessee*] my title to which is recorded in the said register on [*date*].

[*Testing clause (a)*].

(a) As to the requisites of the testing clause, see section 38 of the Conveyancing Act, *ante*, p. 378.

SCHEDULE (H.)

FORM OF DISCHARGE OF BOND AND ASSIGNATION IN SECURITY.

I, *A.B.* [*designation,*] in consideration of the sum of now paid to me by *C.D.* [*designation,*] discharge a bond and assignation in security for the sum of , granted by the said *C.D.* in my favour [*or as the case may be**], and which is dated and recorded in the [*register, and date of recording*]; and I declare to be disburdened thereof a

lease granted by *E.F.* [*designation*] of [*shortly mention subjects leased*] in the parish of _____ and county of _____, which lease is dated _____ and recorded [*register, and date of recording*].

[*Testing clause (a)*].

* NOTE.—If granter not original creditor, here state his title, and date of recording the same (*b*).

(*a*) As to the requisites of the testing clause, see section 38 of the Conveyancing Act, *ante*, p. 378.

(*b*) Thus, “to which bond and assignation in security I acquired right by translation by G. H. (*designation*) in my favour, dated _____, and recorded in the” (*register and date of recording*).

14. *Entry of decree of reduction.*—On the production to any such keeper (*a*) of an extract of a decree of reduction of any such lease, assignation, assignation in security, translation, adjudication, instrument, discharge, or renunciation recorded in the register of which he is the keeper, he shall forthwith duly record the same.

(*a*) Viz., any keeper of a register of sasines.

15. *Mode of registering.*—*Extracts to make faith as writs registered (a).*—Leases, assignations, assignations in security, translations, adjudications, instruments, discharges, renunciations, and other writs, duly presented for registration (*b*) in pursuance of this Act, shall be forthwith shortly entered in the minute book of the register in common form (*c*), and shall, with all due despatch, be fully registered in the register book, and thereafter re-delivered to the parties (*d*), with certificates of due registration thereon, which shall be probative of such registration, such certificates specifying the date of presentation, and the book and folio in which the ingrossment has been made, and being subscribed by the keeper of the register (*e*); and the date of entry in the minute book shall be held to be

the date of registration; and extracts of all such writs registered in pursuance of this Act shall make faith in all cases in like manner as the writs registered, except where the writs so registered are offered to be improved (*f*).

(*a*) The object of this section is to make rules for the registration of leases, &c., similar to those applicable to the registration of sasines and their modern equivalents. The enactment is expressed in the same terms as the provisions of the Heritable Securities Acts of 1845 and 1847 (8 and 9 Vict. c. 31, sec. 5, and 10 and 11 Vict. c. 50, sec. 5). The Land Registers Act of 1868, which, however, is not applicable to burgh registers of sasines, contains additional rules.

(*b*) Section 141 of the Consolidation Act, *ante*, p. 267, as amended by section 33 of the Conveyancing Act, *ante*, p. 372, provides that all writings which may be recorded in any register of sasines shall, previous to being presented for registration, have a warrant of registration endorsed or written thereon.

(*c*) Before being entered in the minute book, and immediately on being received, all writs are very shortly entered in the presentment book; and the order of the entries in the presentment book is strictly preserved in the minute book. This practice has received statutory sanction from sections 6 and 7 of the Land Registers Act of 1868, printed *post*.

(*d*) If the deed is registered for preservation, or preservation and execution, as well as for publication, it is not given back to the party; see section 12 of the Land Registers Act of 1868, printed *post*.

(*e*) Section 14 of the Land Registers of 1868, printed *post*, provides that the certificate of registration on every writ registered in the general register of sasines shall be signed by the keeper of that register, or a deputy duly commissioned by him.

(*f*) That is to say, the extracts are equally probative with the original writs, except where these are challenged as false and forged.

16. Registration equivalent to possession.—The registration of all such leases, assignments, assignments in security, translations, adjudications, writs of acknowledgment, and notarial instruments as aforesaid, in manner herein provided (*a*), shall complete the right under the same respectively, to the effect of establishing a preference in virtue thereof, as effec-

tually as if the grantee, or party in his right, had entered into the actual possession of the subjects leased under such writs respectively at the date of registration thereof (b).

(a) Viz. in section 15, *ante*, p. 452.

(b) In the case of *Rodger v. Crawford*, 9th Nov. 1867, 6 Macph. 24, where there was a competition between two assignees, neither of whom had possession, as to the right to a long lease, it was held that the assignee who had completed his right by registration was preferable to a prior assignee whose title was intimated to the landlord, but not recorded.

Questions attended with considerable difficulty may be raised as to the effect of this section in the case of a competition between a lease followed by possession and a lease recorded under the Act; see *Journal of Jurisprudence*, vol. ii., pp. 172, 253, and 255. It is, however, thought that a lessee who has obtained lawful possession is secure against any other party who may subsequently record another leasehold title, seeing that section 2 provides that except for the purposes of the Act it shall not be necessary to record a lease.

17. *Leases, with obligation to renew, registerable.*
—Leases containing an obligation upon the grantor to renew the same from time to time at fixed periods, or upon the termination of a life or lives, or otherwise, shall be deemed leases within the meaning of this Act, and registerable as such, provided such leases shall by the terms of such obligation be renewable from time to time so as to endure for a period of thirty-one years or upwards (a).

(a) The meaning of this section is by no means clear, but it seems to be that the terms of the lease must import an obligation on the landlord to renew the lease, so that, in the event of the tenant asking for a renewal, the lease *must* endure for no less a period than thirty-one years. If this construction is correct, a lease for the lifetime of the tenant, with an obligation to renew it thereafter for a shorter period than thirty-one years, will not be registerable, seeing that such lifetime and period put together are not necessarily equal to a period of thirty-one years. It may, however, be maintained that such a lease becomes registerable on the tenant continuing in life for such number of years as, added to the period for which the lease is to endure after his death, exceed thirty-one years, seeing that, under section 2, leases may be recorded at any time during their currency.

18. *No lease executed after date of Act to be registerable where name of lands and boundaries (a) not given.*—No lease of lands and heritages other than subjects (b) held by burgage tenure executed after the passing of this Act (c), unless where the same shall have been executed in terms of an obligation to renew contained in a lease renewable as aforesaid (d), and of date prior to this Act, shall be held to fall within the same or to be registerable thereunder, unless the name of the lands of which the subjects let consist or form a part shall be set forth in such lease; and no such lease (e) of such lands and heritages as aforesaid (f), except where the same consist of mines or minerals, shall be held to fall within this Act or to be registerable thereunder, unless the extent of the land let shall be set forth in such lease, and shall not exceed fifty acres.

(a) The word “boundaries” in this rubric has been erroneously inserted instead of the word “extent.”

(b) Here read as inserted the words “which immediately prior to 1st October 1874 were,” as section 25 of the Conveyancing Act, *ante*, 359, abolishes the distinction between burgage and feu from and after that date.

(c) *Viz.*, 10th August 1857.

(d) *Viz.*, in section 17, *ante*, p. 454.

(e) That is to say, no lease executed after the passing of the Act, unless where the same shall have been executed in terms of an obligation to renew contained in a lease of date prior to the Act.

(f) That is to say, lands and heritages other than subjects which immediately prior to 1st October 1874 were held by burgage tenure.

19. *Extracts registerable where leases recorded in Court of Session or Sheriff Court Books prior to Act.*—Where any such lease as aforesaid (a) registerable under this Act shall, before the passing thereof (b), have been recorded in the Books of Council and Session, or in the Books of any Sheriff, (c) or Burgh Court, the production to the keeper of the register of

an extract (*d*) of such lease shall be a sufficient warrant for him to record the same (*e*), and he shall thereupon duly record it, and the recording thereof shall be as valid and effectual as if the original lease had been presented to him.

(*a*) See section 1, *ante*, p. 432.

(*b*) *Viz.*, 10th August 1857. This enactment was required in the case of leases dated prior to the Act, on account of many such leases being beyond the control of the lessees, who had given them in for recording in the Books of Council and Session or other court books.

(*c*) By 40 and 41 Vict. c. 36, sec. 2, which is printed *post*, it is provided that this section shall be read as if the word "commissary" were here inserted. From the mode in which this amendment is made, retrospective effect is given to the amendment so as to secure from challenge the registration of extracts from the books of any Commissary Court.

(*d*) *Viz.*, an extract from the books in which the lease itself is recorded.

(*e*) A warrant of registration must be endorsed on the extract; see note (*b*) to section 15, *ante*, p. 453.

20. *Clauses in Schedules to be held to import and to have effect as declared by 10 and 11 Vict. c. 50.*—The several clauses in the schedules to this Act annexed shall be held to import such and the like meaning and to have such and the like effect as is declared by the Act of the tenth and eleventh of Queen Victoria, chapter fifty (*a*), sections second and third, to belong to the corresponding clauses in the schedule to the said recited Act annexed, and the procedure thereby prescribed for a sale under a bond and disposition in security shall be applicable to a sale of any such lease as aforesaid under any such assignation in security as is herein-before mentioned (*b*).

(*a*) The Act referred to is one of those repealed by section 4 of the Consolidation Act; but section 163 of the latter Act provides that "notwithstanding the repeal of the said Acts, the same shall be held to be still in force as far as regards any reference which may be

“ made to them or any of them in any statute not hereby repealed,
 “ and to the effect of giving full effect to such reference.”

(b) The schedule to the Act referred to is in the following terms :—

SCHEDULE (A.)

“ I, *A.B.* [*here name and design the granter*], grant me to have
 “ instantly borrowed and received from *C.D.* [*here name and design*
 “ *the creditor*] the sum of [*insert the sum*] sterling; which sum I
 “ bind myself and my heirs, executors, and representatives whomso-
 “ ever, without the necessity of discussing them in their order, to
 “ repay to the said *C.D.*, or his heirs and assignees whomsoever, at
 “ the term of [*here insert the date and place of payment*], with a fifth
 “ part more of liquidate penalty in case of failure, and the legal in-
 “ terest of the said principal sum from the date hereof to the said
 “ term of payment, and half-yearly, termly, and proportionally
 “ thereafter during the not-payment of the same, and that at two
 “ terms in the year, Whitsunday and Martinmas, by equal portions,
 “ beginning the first term’s payment of the said interest at the term
 “ of next to come, for the interest due preceding that
 “ date, and the next term’s payment thereof at follow-
 “ ing, and so forth, half-yearly, termly, and proportionally there-
 “ after during the not-payment of the principal sum, with a fifth
 “ part more of the interest due at each term of liquidate penalty in
 “ case of failure in the punctual payment thereof: And in security
 “ of the personal obligation before written, I dispoñe to and in favour
 “ of the said *C.D.* and his foresaids, heritably, but redeemably as
 “ after mentioned, yet irredeemably in the event of a sale by virtue
 “ hereof, all and whole [*here describe the lands or other heritages*],
 “ and that in real security to the said *C.D.* and his foresaids of the
 “ whole sums of money above written, principal, interest, and penal-
 “ ties: And I assign the rents; and I assign the writs; and I grant
 “ warrandice; and I reserve power of redemption; and I oblige my-
 “ self for the expenses of assigning and discharging this security;
 “ and on default in payment I grant power of sale; and I consent
 “ to registration for preservation and execution, and also to regis-
 “ tration in the general or particular [*or burgh, as the case may be*]
 “ register of sasines.—In witness whereof, &c. [*add a testing*
 “ *clause*].”

And the sections referred to are in the following terms :—

“ II. *Explanation of clauses in Schedule (A).*—And be it en-
 “ acted, that the clause of assignation of rents to become due
 “ or payable shall be held to import an assignation to rents
 “ from and after the term from which interest on the sum in the
 “ bond commences to run in the fuller form now generally in
 “ use, including therein a power to the creditor, on default in
 “ payment, to enter into possession of the lands dispoñed in secu-
 “ rity and uplift the rents thereof, subject to accounting to the

“debtor for any balance of rents actually recovered beyond what is
 “necessary for payment of the creditor; and the clause of assign-
 “nation of writs shall be held to import an assignation to writs
 “and evidents to the same effect as in the fuller form now in use
 “in a bond and disposition in security with power of sale; and the
 “clause of warrandice shall be held to import absolute warrandice
 “as regards the lands and the title-deeds thereof, and warrandice
 “from fact and deed as regards the rents; and the clause consent-
 “ing to registration for preservation and execution shall import a
 “consent to registration and a procuratory for registration in the
 “Books of Council and Session, or other judges’ books competent
 “for preservation, and that letters of horning on six days’ charge,
 “and all other necessary execution, may pass on a decree to be in-
 “terponed thereto; and the clause consenting to registration in the
 “general or particular or burgh register of sasines shall entitle the
 “creditor to register the said bond accordingly, either in the general
 “register of sasines or particular register of sasines, or burgh regis-
 “ter of sasines as the tenure of the lands embraced in the security
 “may require.

“III. *Clauses reserving right of redemption, and of obligation to*
 “*pay expense of assignation or discharge, and power of sale, valid,*
 “*&c.*—And be it enacted, that the clauses reserving right of re-
 “demption, and obliging the granter to pay the expenses of assign-
 “ing or discharging the security, and, on default in payment,
 “granting power of sale, shall be in all respects as valid, effectual,
 “and operative as if it had been in such bond and disposition in
 “security specially provided and declared that the lands and others
 “thereby disposed should be redeemable by the granter, his heirs
 “and successors, from the grantee and his heirs and successors, at the
 “term and place of payment, or at any term of Whitsunday or
 “Martinmas thereafter, upon premonition of three months, to be
 “made by the granter or his foresaids, to the grantee or his fore-
 “saids, personally or at their dwelling-places, if within Scotland,
 “and if furth thereof at the time, then at the office of the keeper
 “of the record of edictal citations within the General Register
 “House, Edinburgh, in presence of a notary public and witnesses,
 “and that by payment to them of the whole principal sum payable
 “under the bond and disposition in security, interest due thereon,
 “and liquidated expenses and termly failures corresponding thereto,
 “if incurred, and in case of their absence or refusal to receive the
 “same, by consignment thereof in one or other of the banks in
 “Scotland, incorporated by Act of Parliament or royal charter,
 “having an office or branch at the place of payment, to be made
 “furthercoming on the peril of the consigner, the place of redemption
 “to be within the office of such bank or branch thereof; and as if
 “it had been thereby further provided and declared that any dis-
 “charge and renunciation, disposition and assignation, or other deed
 “necessary, to be granted by the grantee or his foresaids, upon the
 “granter or his foresaids making payment and redeeming as aforesaid,

“ and also the recording thereof, should always be at the expense of
“ the granter and his foresaids; and as if it had been thereby
“ further provided and declared that if the granter or his foresaids
“ should fail to make payment of the sums that should be due by
“ the personal obligation contained in the said bond and disposition
“ in security within three months after a demand of payment inti-
“ mated to the granter or his foresaids, whether of full age or in
“ pupillarity or minority, or although subject to any legal incapacity,
“ personally, or at their dwelling places if within Scotland, or if
“ furth thereof at the office of the keeper of the record of edictal
“ citations above mentioned, by a notary public and witnesses, then
“ and in that case it should be lawful to and in the power of the
“ grantee or his foresaids, immediately after the expiration of the
“ said three months, and without any other intimation or process at
“ law, to sell and dispose, in whole or in lots, of the said lands and
“ others by public roup, at Edinburgh or Glasgow, or at the head
“ burgh of the county within which the said lands and others, or
“ the chief part thereof, are situated, or at the burgh or town send-
“ ing or contributing to send a member to Parliament which,
“ whether within or without the county, shall be nearest to such
“ lands, or the chief part thereof, on previous advertisement stating
“ the time and place of sale, and published once weekly for at least
“ six weeks subsequent to the expiry of the said three months, in
“ any newspaper published in Edinburgh, and also any newspaper
“ published in such county, or if there be no newspaper published
“ in such county, then in any newspaper published in the
“ next or a neighbouring county, the grantee being always
“ bound, upon payment of the price, to hold count and reckoning
“ with the granter or his foresaids for the same, after deduction of
“ the principal sum secured, interest due thereon, and liquidated
“ penalties corresponding to both which may be incurred, and all
“ expenses attending the sale, and for that end to enter into articles
“ of roup, grant dispositions, containing all the usual and necessary
“ clauses, and in particular a clause binding the granter of the said
“ bond and disposition in security, and his heirs, in absolute waran-
“ dice, of such dispositions, and obliging him and them to corrob-
“ rate and confirm the same, and to grant all other deeds and
“ securities requisite and necessary by the laws of Scotland for
“ rendering such sale or sales effectual, in the same manner and as
“ amply in every respect as the granter could do himself; and as if
“ it had been thereby further provided and declared that the said
“ proceedings should all be valid and effectual, whether the debtor
“ in the said bond and disposition in security for the time should be
“ of full age, or in pupillarity or minority, or although subject to
“ any legal incapacity, and that such sale or sales should be equally
“ good to the purchaser or purchasers as if the granter himself had
“ made them, and also that in carrying such sale or sales into exe-
“ cution, it should be lawful to the grantee and his foresaids to pro-
“ rogate and adjourn the day of sale from time to time as they
“ should think proper, previous advertisement of such adjournment

“ being given in the newspapers above mentioned once weekly for
 “ at least three weeks; and as if the granter had bound and obliged
 “ himself and his foresaids to ratify, approve of, and confirm any
 “ sale or sales that should be made in consequence thereof, and to
 “ grant absolute and irredeemable dispositions of the lands and
 “ others so to be sold to the purchaser or purchasers, their heirs and
 “ assignees, and to execute and deliver all other deeds and writings
 “ necessary for rendering their rights complete.”

These sections are re-enacted, with some alterations, by sections 118 and 119 of the Consolidation Act, *ante*, p. 227 *et seq.*, to the notes on which reference may be made. It must, however, be borne in mind that as these sections of the Consolidation Act are not applicable to leases, the sections above quoted of 10 and 11 Vict. c. 50 still regulate the import and meaning of the several clauses in the schedules to the present Act.

21. Short title.—This Act may be cited for all purposes as “The Registration of Leases (*Scotland*) Act, 1857.”

SCHEDULES.

SCHEDULE (A.)	Printed <i>ante</i> , p. 436.
SCHEDULE (B.)	Printed <i>ante</i> , p. 437.
SCHEDULE (C.)	No. 1. Printed <i>ante</i> , p. 439. No. 2. Printed <i>ante</i> , p. 441.
SCHEDULE (D.)	Printed <i>ante</i> , p. 442.
SCHEDULE (E.)	No. 1. Printed <i>ante</i> , p. 444. No. 2. Printed <i>ante</i> , p. 445.
SCHEDULE (F.)	No. 1. Printed <i>ante</i> , p. 446. No. 2. Printed <i>ante</i> , p. 448.
SCHEDULE (G.)	Printed <i>ante</i> , p. 451.
SCHEDULE (H.)	Printed <i>ante</i> , p. 451.

40 & 41 VICTORIA,

CHAP. 36.

An Act to amend “The Registration of Leases (Scotland) Act, 1857.”—[6th August 1877.]

[“The Registration of Leases (Scotland) Amendment Act, 1877.”]

WHEREAS an Act was passed in the session holden in the twentieth and twenty-first years of Her Majesty (chapter twenty-six) to provide for the registration of long leases in Scotland and assignments thereof; and whereas it is expedient to amend the said Act: Be it therefore enacted by the Queen’s most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: 20 & 21
Vict. c. 26.

1. “*Commissary*” to be read in recited Act after “*sheriff*.”—Section nineteen of the said recited Act shall be read as if the word “*commissary*” occurred therein immediately after the word “*sheriff*” (a).

(a) As to the purpose and effect of this amendment, see the section here referred to; *ante*, p. 455.

2. Act 49 Geo. III., c. 42, not to be affected.—Nothing in this Act shall affect the provisions of an Act passed in the forty-ninth year of his late Majesty

King George the Third (chapter forty-two) for the better regulating the public records of Scotland (*a*).

(*a*) The Act here referred to, on a preamble of the inconvenience arising from the unnecessary multiplicity of registers for execution or for preservation, prohibited all registration in Commissary Courts from and after the expiration of six months after 12th May 1809, the date of the passing of the Act.

3. *Short title.*—This Act may be cited for all purposes as “The Registration of Leases (Scotland) Amendment Act, 1877.”

25 & 26 VICTORIÆ REGINÆ,

CAP. LXXXV.

An Act to facilitate the Transmission of Moveable Property in Scotland.—[7th August 1862 (a).]

[The “Transmission of Moveable Property (Scotland) Act, 1862.”]

(a) The Act took effect from and after this, the date of its passing.

WHEREAS it is expedient to facilitate the transmission of moveable estate in *Scotland* (a): Be it enacted by the Queen’s most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

(a) The objects of this Act are to provide a short form of assignation of almost any kind of deed relating to moveable estate, to allow the assignation to be written or endorsed on the deed so assigned, and to introduce a simple mode of intimating assignations. The Act is merely permissive, thus permitting recourse to be had, when desired, to the forms previously in use.

1. *Personal bond or conveyance of moveable estate may be assigned in the form set forth in Schedule (A).*—From and after the passing of this Act (a), it shall be competent to any party, in right of a personal bond or of a conveyance of moveable estate (b), to assign such bond or conveyance by assignation in or as nearly as may be (c) in the form set forth in Schedule (A.) hereto annexed; and it shall be competent to write the assign-

nation or assignments on the bond or conveyance itself (b) in or as nearly as may be (c) in the form set forth in Schedule (B.) hereto annexed; which assignation shall be registrable in the books of any court, in terms of any clause of registration contained in the bond or conveyance so assigned (d); and such assignation, upon being duly stamped and duly intimated (e), shall have the same force and effect as a duly stamped and duly intimated assignation according to the forms at present in use (f).

(a) Viz., 7th August 1862.

(b) As to the meanings attached by the Act to the words "bond," "conveyance," and "moveable estate," see section 4, *post*, p. 467.

(c) There must be no actual deviation from the form here provided. As to the modifications required to adopt the form to various circumstances, see Juridical Styles, 4th ed., vol. ii., p. 674 *et seq.*

The form may be used not only where the assignation is irredeemable, but also, with the necessary modification, where it is in security merely. As to assignments in security, see Bell's Lectures on Conveyancing, 2d ed., p. 331.

(d) As to a clause of registration, see section 138 of the Consolidation Act, *ante*, p. 264.

(e) As to intimation, see section 2.

(f) As to the old forms, see Juridical Styles, 3d ed., vol. ii., p. 317.

SCHEDULE (A.)

I, *A.B.*, in consideration, &c. [*or otherwise, as the case may be*], do hereby assign to *C.D.* and his heirs or assignees, [*or otherwise, as the case may be*] the bond [*or other deed, describing it*] granted by *E.F.*, dated, &c., by which [*here specify the nature of the deed, and specify also any connecting title, and any circumstances requiring to be stated in regard to the nature and extent of the right required (a)*] (b). In witness whereof, &c.

[*Insert testing clause in usual form (c)*].

(a) The word "required" seems to be a misprint for the word "assigned."

(b) As the warrandice will be that which is implied by the nature of the transaction (in the ordinary case from fact and deed only, and *debitum subesse*), unless otherwise expressed, care should be taken to express any other warrandice that may be intended to be given.

A clause of delivery of the writs may, if desired, be inserted; but this is probably superfluous.

If the bond or conveyance assigned contains a clause of registration, such a clause does not require to be inserted in the assignation. If the bond or conveyance does not contain such a clause, a clause of registration for preservation may be inserted in the assignation.

(c) As to the requisites of the testing clause, see section 38 of the Conveyancing Act, *ante*, p. 378.

SCHEDULE B.

I, *A.B.*, in consideration of, &c. [*or otherwise as the case may be*], do hereby assign to *C.D.* and his heirs or assignees [*or otherwise as the case may be*] the foregoing [*or within written*] bond [*or other writ or deed, describing it*], granted in my favour [*or otherwise as the case may be, specifying any connecting title, and any circumstances requiring to be stated in regard to the nature and extent of the right assigned*].—In witness whereof, &c.

[*Insert testing clause in usual form (a)*].

(a) See notes (b) and (c) to Schedule A. *supra*.

2. *Certified copy to be delivered to person or persons to whom intimation may in any case be requisite (a).*—An assignation (b) shall be validly intimated (1) by a notary public delivering a copy thereof, certified as correct, to the person or persons to whom intimation may in any case be requisite, or (2) by the holder of such assignation, or any person authorized by him, transmitting a copy thereof certified as correct (c) by post to such person; and (in the first case) a certificate by such notary public in or as nearly

as may be in the form set forth in Schedule C. hereto annexed, and (in the second case) a written acknowledgment (*d*) by the person to whom such copy may have been transmitted by post as aforesaid of the receipt of the copy, shall be sufficient evidence of such intimation having been duly made (*e*): Provided always, that if the deed or instrument containing such assignation shall likewise contain other conveyances or declarations of trust purposes, it shall not be necessary to deliver or transmit a full copy thereof, but only a copy of such part thereof as respects the subject matter of such assignation.

(*a*) The object of this section is to provide a simple mode of intimating assignations. Under the former law and practice, intimation was made by the attorney of the assignee delivering to the person to whom intimation was requisite, or leaving at his dwelling-house, a schedule of intimation, in the presence of a notary public, who thereupon expedite an instrument of intimation; see Juridical Styles, 3d ed., vol. ii., p. 351.

(*b*) The word "assignation" here appears to include every kind of assignation, not merely assignations in the short form introduced by this Act.

(*c*) By the person transmitting the copy, or at least by a person competent to attest the fact of its correctness.

(*d*) The acknowledgment should be either holograph or tested, though this does not appear to be absolutely essential.

(*e*) There is no special provision for the case of the person to whom intimation requires to be made being out of Scotland; but the provisions of this section appear to be applicable wherever such person may reside. As to edictal intimation, see Bell's Lectures on Conveyancing, 2d ed., p. 312.

SCHEDULE C.

I, *A.* of the city of _____ notary
public, do hereby attest and declare, That upon the
day of _____ and between the hours of
and _____ I duly intimated to *B.* [*here*
describe the party], the within written assignation [*or*

otherwise, as the case may be], or an assignation granted by [here describe it], and that by delivering to the said A. (a) personally [or otherwise] by leaving for the said A. (a) within his dwelling-house at E., in the hands of [here describe the party (b)], a full copy thereof, [or if a partial copy, here quote the portion of the deed which has been delivered (c)], to be given to him; all of which was done in presence of C. and D. [here name and describe the two witnesses], who subscribe this attestation along with me (d).—In witness whereof.

[Insert testing clause in usual form (e), to be subscribed by the party (f) and two witnesses.]

(a) The letter "A." is here obviously a misprint for "B.," the party to whom intimation is made.

(b) That is to say, the person in whose hands the copy is left for the party to whom intimation is made.

(c) It does not seem necessary to give here a full copy of such portion, provided such portion is so set forth as to show plainly of what it consists.

(d) The witnesses attest by their subscriptions both the facts stated in the notary's certificate and the subscription of the notary.

(e) As to the requisites of the testing clause, see section 38 of the Conveyancing Act, *ante*, p. 378.

(f) By the word "party" is here meant the notary public.

3. As to transmission of personal bond, &c. according to present forms.—Nothing in this Act contained shall prevent the transmission of any personal bond or conveyance of moveable estate, or the intimation of any assignation according to the forms at present in use (a).

(a) As to the forms referred to, see the Juridical Styles, 4th ed., vol. ii., p. 665 *et seq.*

4. Interpretation of terms.—The following words in this Act, and in the schedules annexed to this Act,

shall have the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; that is to say, the word "bond" and the word "conveyance" shall extend to and include personal bonds for payment or performance, bonds of caution, bonds of guarantee, bonds of relief, bonds and assignations in security of every kind, decreets of any court, policies of assurance of any assurance company or association in *Scotland* (*a*), whether held by parties resident in *Scotland* or elsewhere, protests of bills or of promissory notes, dispositions, assignations, or other conveyances of moveable or personal property or effects, assignations, translations (*b*), and retrocessions (*c*), and also probative extracts of all such deeds from the books of any competent court; the word "assignation" shall also include translations (*b*) and retrocessions (*c*), and probative extracts thereof; the words "moveable estate" shall extend to and include all personal debts and obligations (*d*), and moveable or personal property or effects of every kind (*e*).

(*a*) The assignation of policies of life assurance is now regulated by 30 and 31 Vict. c. 144, which is applicable to the whole United Kingdom.

(*b*) Translation is the name given to the conveyance, where the debt or obligation has already been made the subject of assignation.

(*c*) Retrocession is the name given to the conveyance, where the person in right of the debt or obligation, whether by assignation, translation, or subsequent conveyance, re-conveys it to his author.

(*d*) Including, it is thought, legacies and reversionary interests in trust estates.

(*e*) The statutory forms are not applicable to a disposition of corporeal moveables which have not already been contained in a conveyance or other deed; nor apparently to the conveyance of an unconstituted balance due upon an open account, unless such balance has already been contained in an assignation or other deed.

See Bell's Lectures on Conveyancing, 2d ed., p. 324 *et seq.*, as to the special forms required to transfer bank stock, patents, and

copyright; the Companies Acts of 1862 and 1867, as to the transfer of shares; and the Merchant Shipping Acts, as to the transfer of ships.

5. *Short title.*—This Act may be cited for all purposes as the “Transmission of Moveable Property (Scotland) Act, 1862.”

SCHEDULES REFERRED TO IN THE
FOREGOING ACT.

SCHEDULE A. Printed *ante*, p. 464.

SCHEDULE B. Printed *ante*, p. 465.

SCHEDULE C. Printed *ante*, p. 466.

29 & 30 VICTORIÆ REGINÆ,

CAP. LXXI.

An Act to facilitate the letting on Lease, feuing, or selling Glebe Lands in Scotland.—[6th August 1866 (a).]

[The Glebe Lands (*Scotland*) Act, 1866.]

(a) The Act took effect from and after this, the date of its passing.

WHEREAS it is expedient that power should be given to grant leases or feus of glebe lands, or portions thereof, in *Scotland*, or to sell the same, in manner after mentioned (a) :

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows : *viz.*,

(a) Both at common law and under the Act 1572, c. 48, it is incompetent for a minister to confer any right to use or occupy glebe lands beyond the period of his own incumbency ; see Duncan's Parochial Ecclesiastical Law, p. 541. In a few cases, special Acts of Parliament have been obtained authorizing the feuing of such lands, in the neighbourhood of large towns, where most advantageous terms could be got. The object of the present Act is to extend to all cases the advantages of such special Acts, by empowering every incumbent, with certain consents, to grant feus or leases of a definite duration, and to sell rights of servitude connected with his glebe.

1. *Short title.*—This Act may be cited as “The Glebe Lands (*Scotland*) Act, 1866.”

2. *Interpretation of Terms.*—In this Act, unless there be something in the subject or context repugnant to such construction,—

The word “Minister” shall mean the minister of any parish in *Scotland* for the time who shall be in possession of a glebe :

The word “Presbytery” shall mean the presbytery within the bounds of which such parish is situated :

The word “Heritor” shall mean the proprietor of any lands within such parish to the extent of at least one hundred pounds of real rent from land yearly appearing in the Valuation Roll of the county within which such parish is situated :

The word “Glebe” shall mean the lands appropriated to the minister as his glebe, and any additional lands settled in perpetuity on the minister for the time being, and enjoyed by him along with his glebe :

The word “Court” shall mean the Court of Session as Commissioners for the Plantation of Kirks and Valuation of Teinds.

3. *Power to grant Leases not exceeding Eleven Years (a).*—A minister may, with consent and approval of the heritors and the presbytery, grant a lease or leases of his glebe, or any part or parts thereof, reserving for the use of the minister not less than five imperial acres nearest and most convenient to the manse, which shall be marked out by the heritors and the presbytery, for any term not exceeding eleven years, for such yearly rent or rents, and upon such condition or conditions, as shall be approved of by the heritors and the presbytery, but without any foregift or grassum, and under the special condition, if the said reserved five acres be included in the said lease, that such lease, in so far as they are concerned, shall cease and determine at the first term of *Martinmas* six

months after the death, deprivation, resignation, or translation of the minister of the parish; such consent and approval of the heritors and the presbytery to be signified by a certificate written on the lease or leases, and signed by the clerk to the heritors and by the moderator and clerk of such presbytery; and the rent or rents payable under such lease or leases shall be paid and belong to the minister.

(a) As to the meaning attached to the words "minister," "heritors," "presbytery," and "glebe," see section 2, *ante*, p. 471.

4. *Power to sell servitudes or right of pasturage* (a).—A minister may, with the consent of the presbytery and heritors, sell or dispose of, for such fixed annual payment in grain or in money as may be agreed on, any servitude or right of pasturage over any lands, which servitude or right of pasturage is possessed by him as minister of the parish: Provided always, that if the proprietor of the lands over which such servitude or right of pasturage exists elect to purchase it absolutely, the purchase money shall be invested at the sight of the heritors and presbytery on such securities and in such manner as the Court of Teinds shall direct, and the interest and proceeds only shall be paid to the minister.

(a) As to the meaning attached to the words "minister," "presbytery," and "heritor," see section 2, *ante*, p. 471.

5. *Application to Court to grant feus* (a).—Subject to the provisions of this Act (b), the minister may from time to time, with the consent of the presbytery and of the heritors as herein-after provided (c), make application to the Court by summary petition (d) for authority to feu (e) his glebe, or any part thereof, or to grant building leases thereon for any term not exceeding ninety-nine years.

(a) As to the meaning attached to the words "minister," "presbytery," "heritors," "Court," and "glebe," see section 2, *ante*, p. 471.

(b) Viz., sections 6 to 9 inclusive.

(c) Viz., in sections 6, 7, and 8.

(d) A form of petition is printed *post*, p. 475.

(e) The authority to feu is not limited to feus for building purposes; *Macleod*, 4th July 1870, 8 Macph. 955. See also section 13, *post*, p. 485.

6. *Consent of Presbytery to be obtained before application made (a).*—Previous to making any such application the minister shall intimate his intention so to do to the presbytery by a letter addressed to the moderator, and shall transmit therewith a copy of the proposed application, which intimation and application shall be laid by the moderator before the presbytery at their first meeting after receiving the same; and if the presbytery are of opinion that it would be for the interests of the benefice that the glebe should be feued or let on building leases, they shall signify their consent to such application, subject to such conditions, if any, as they think necessary or advisable, by a certificate to that effect written on a copy of the proposed application, and signed by the moderator and clerk.

(a) As to the meaning attached to the words “minister,” “presbytery,” and “glebe,” see section 2, *ante*, p. 471.

7. *Also consent of heritors (a).*—Upon such certificate being granted, the minister shall call a meeting of heritors, such meeting to be summoned by intimation from the pulpit in the usual manner, and by notices, with a copy of the proposed application enclosed therein, delivered or sent by post to each heritor or his known agent, at least thirty days previous to the day on which such meeting is to take place within the parish, such meeting to be held on a day and at an hour and at a place to be specified in such citation and notices, and at such meeting every heritor may vote by proxy or by letter under his hand.

(a) As to the meaning attached to the words "minister" and "heritors," see section 2, *ante*, p. 471.

8. *Consent of heritors, how to be determined and proved* (a).—At that meeting (b) a copy of the proposed application to the Court shall be submitted to such meeting; and if approved of by two thirds in value of the heritors of such parish, the clerk to the heritors shall grant a certificate to that effect under his hand to the minister.

(a) As to the meaning attached to the words "court," "heritors," and "minister," see section 2, *ante*, p. 471.

(b) Viz., at the meeting mentioned in section 7, *ante*, p. 473.

9. *Particulars to be stated in application*.—Every such petition (a) shall state the date of the petitioner's induction to the parish, the amount of the stipend and other sources of emolument attached to the living, the extent of the parish, the population according to the immediately preceding census, the nature and extent of the glebe (b), the purpose of the proposed feuing or granting building leases, the expected rate of feu duty or rent, and the grounds on which the petitioner submits that benefit will arise to the minister (b) and his successors in office by authority to feu or lease being granted (c); and there shall be produced therewith the certificate (d) of the presbytery and heritors (b), and the form of feu charter (e) or building lease proposed to be adopted.

(a) Viz., the summary petition mentioned in section 5, *ante*, p. 472.

(b) As to the meaning attached to the words "glebe," "minister," "presbytery," and "heritors," see section 2, *ante*, p. 471.

(c) The following is a style for such a petition :—

UNTO THE RIGHT HONOURABLE

THE LORDS OF COUNCIL AND SESSION

(Commissioners for Plantation of Kirks and Valuation of Teinds),

THE

P E T I T I O N

OF

THE REVEREND A.B., Minister of the Parish of C.,

Humbly Sheweth,—

THAT the petitioner is minister of the parish of C. in the county of _____, and in the presbytery of _____, and is desirous to take advantage of the provisions of "The Glebe Lands (Scotland) Act, 1866," in order to obtain authority from your Lordships to feu a portion of his glebe.

That the petitioner was inducted to the said parish on _____.

That the amount of stipend payable to the petitioner is _____ chalders, half meal, half barley, with an allowance of _____ for communion elements. The petitioner is also entitled to the interest of a sum of _____ as compensation due by the

Railway Company for parts of the glebe taken by them, and for injuries to feuing ground and amenity of the manse, the destruction of a cottage, and other injuries. This sum is about to be consigned in bank by the railway company. It has borne interest hitherto at 5 per cent., will bear interest at the bank deposit rates during consignment, and after investment may produce an income equivalent to interest at 4 per cent. per annum, which interest would amount annually to the sum of _____. There are no other emoluments attached to the benefice except those above specified.

That the extent of the parish is _____ imperial acres or thereby. The population, according to the census of 1871, was _____.

That the glebe, including the site of the manse and garden, extends (after deduction of the land taken by the said railway company) to _____ acres or thereby. The land is partly rocky, but generally arable. It is chiefly of a light dry character, lying upon an open rock, with a natural drainage, and is well adapted for building purposes.

It is situated near the town of _____, and part of it opposite the new railway station and terminus formed by said railway company. It is partly bounded by the turnpike road leading from _____ to _____, which road is a continuation of the main street of the town, and partly by the turnpike road leading to _____.

That the purpose of the proposed feuing is the erection of dwelling-houses either in detached villas or in streets, including shops in such streets, but not elsewhere.

That the minimum rate of feu-duty expected to be obtained for the land fronting the said roads is £ _____ per acre; and a similar

rate is expected also for the other land, if feued in portions not exceeding an acre for each dwelling-house, and for such other land feued for detached houses and villas in portions exceeding an acre, £ per acre.

The glebe is more suited for feuing than for being possessed as an agricultural subject; and from its situation and proximity to the town and railway station, it is expected that feus could speedily be taken off. Offers have already been received.

A plan is herewith produced, on which the manse, with garden and grounds, and the glebe-lands (under exception of the parts taken by said railway company) are laid down; the portions thereof along the said public roads intended to be feued at the minimum feu-duty of £ being coloured green, the other land without such frontage, and intended to be feued, if taken in portions not exceeding an acre, also at a minimum feu-duty of £ , but if taken in portions exceeding an acre, then of £ , being coloured yellow; and the ground which it is not proposed to feu being coloured red. The latter ground, coloured red, extends to acres or thereby. It surrounds the present manse, and should the heritors at a future time, in rebuilding the manse, wish to remove it from its present site, and farther from the railway station, such ground would furnish the most eligible site on the glebe for the manse.

The said plan also exhibits the line of a road, coloured brown, intended to be laid off as the feuing proceeds, and of a sewer along the same, for the joint use of the petitioner and his successors in office and the feuars, and to be maintained at the joint expense of the feuars.

That the grounds on which the petitioner submits that benefit would arise to himself and his successors in office by authority to feu being granted are, that a material addition would be made to the income of the benefice. At the minimum rate of feuing above proposed, the land would yield nearly times its value for agriculture. And the glebe being greater in extent than usual, a sufficient portion of land would still remain in connection with the manse, with all the amenities of a private and detached residence for the minister.

That it may become necessary to form not only the road already referred to, but also the other roads shown on the plan produced, and coloured blue thereon, as well as other roads and passages, and to construct such drains and sewers in the ground, as may be found necessary in the progress of the feuing and building operations. But the direction of the proposed feuing being somewhat uncertain, it is intended to construct only so much of said roads, passages, and sewers as may be found necessary.

That the petitioner has obtained the consent of the Presbytery and the approval of the heritors to his present application, in the mode prescribed by the said Act; and the statutory certificates to that effect and the form of feu-charter proposed to be adopted are produced herewith.

That the petitioner desires that the expenses of this application and incidental thereto, and the cost of constructing the necessary roads, drains, and sewers, shall be ascertained by your Lordships in the course of the present proceedings, and declared a permanent burden on the glebe.

That the following are the whole proprietors and persons claiming to be proprietors of lands or heritages conterminous with the glebe proposed to be feued, viz. :—

That the sections of the said Act upon which the petitioner founds are the 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, and 18th sections, to which the petitioner begs humbly to refer.

May it therefore please your Lordships to appoint this petition to be intimated in the Minute-Book and on the Walls, in common form, and to be advertised once in the Edinburgh Gazette, and once weekly for three successive weeks in the , or such other newspaper as your Lordships shall think fit ; and also to grant warrant for serving the same, with a copy of your Lordships' deliverance thereon, upon the said

and ordain them respectively to lodge answers thereto, if so advised, within such time as your Lordships shall think proper ; and upon resuming consideration hereof, with or without answers, to remit to such person or persons as your Lordships shall appoint to inquire into the facts above stated, and to report in terms of said Act, and upon receiving such report, and after such further investigation or procedure as your Lordships may be pleased to direct, to authorise and empower the petitioner and his successors in office, at the sight of the heritors and Presbytery, subject to the provisions of the said Act, and subject to such further conditions or restrictions as your Lordships may deem expedient, to grant and dispose of those parts and portions of the said glebe coloured green and yellow on the said plan, or any part or parts thereof, in feu-farm, fee, and heritage, for the highest feu-duties that can be got for the same, not being less than the minimum rates after mentioned, and that either by public auction or private contract, to fix the minimum rate of feuing at the sum of £ per imperial acre for the ground coloured green, and the same rate of £ per imperial acre for the ground coloured yellow, if disposed of in feus not exceeding an acre, but if taken in feus exceeding an acre, at £ per imperial acre, or such other sum or sums respectively as your Lordships may think proper, and to approve of the form of feu-charter herewith produced, as the same may be adjusted at the sight of your Lordships, as the form to be adopted in feuing the said lands ; also to authorise and empower the petitioner, and his successors in office to make and construct the

road shown and coloured brown on said plan, and such other roads and passages, and such sewers or drains in the said lands as may be found reasonable and expedient; further, to ascertain the expenses of this application and incidental thereto, and the cost of making and constructing said roads, drains, and sewers, and to decern the amount thereof a permanent burden upon the glebe, all in terms of the said Statute; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice, &c.

[Signed by Counsel.]

(d) As to the certificates of the presbytery and heritors, see sections 6, 7, and 8, *ante*, pp. 474 and 475.

(e) The following is the model form of feu-charter approved of by the Court in the *Penicuik* case (5 Macph. 1145), with the alterations rendered necessary by the Conveyancing Act, and approved of by the Court in the case of *Browne*, 1st March 1875, 2 Rettie 488 :—

I, the Reverend _____, minister of the parish of _____, in the presbytery of _____, and county of _____, and as such minister in possession of the glebe of the said parish, and duly authorized to feu the subjects hereinafter disposed in virtue of an order or decree of the Right Honourable the Lords of Council and Session, as Commissioners for the Plantation of Kirks and Valuation of Teinds, dated the _____ day of _____ 18____, pronounced in an application presented by me on the _____ day of _____ 18____, for authority to feu the glebe of the said parish under and in terms of the Act 29th and 30th Victoria, cap. 71, entitled "An Act to facilitate the letting on Lease, feuing, or selling Glebe Lands in Scotland," with consent of the heritors of said parish as certified by _____, clerk of the said heritors, and of the presbytery of _____, as certified by _____, moderator, and _____, clerk of the said presbytery, the said clerk of the heritors and moderator, and clerk of the presbytery, respectively subscribing these presents on behalf of, and as duly authorized by, the said heritors and presbytery respectively, IN CONSIDERATION of the feu-duty and other prestations underwritten, and with and under the reservations, conditions, restrictions, obligations, provisions, and declarations after specified, do hereby sell and in feu-farm dispose to and in favour of _____ and his heirs and successors whomsoever [*The destination in each case will be matter of arrangement with the feuar. The clauses obligatory on the feuar, and other relative clauses, will be subject to corresponding alterations*], but excluding assignees before infestment hereon, or registration hereof, in the register of sasines; declaring that it shall not be competent after the expiry of six months from the last date hereof to expedite infestment hereon, or to register these presents in the said register of sasines, to the effect of completing a valid feudal title under the

same, heritably and irredeemably, All and whole—[*Here describe the subjects, and the following reservation of minerals will be inserted or omitted, as may be determined by the minister, heritors, and presbytery*]—reserving always to those having right thereto as proprietors or incumbents of the said glebe for their respective rights and interests, the whole mines, metals, minerals, fossils, coal, limestone, freestone, and others within the piece of ground hereby disposed, and full power and liberty to them, or any person authorized by them, to search for, work, win, and carry away the same; but declaring always, not only that they shall have no right to work or win the said mines, metals, minerals, or others from the surface of the said piece of ground, or in such manner as to injure the surface thereof, or the buildings that may be erected thereon, but also that they shall be bound to satisfy and pay all damages that may be occasioned to the surface of the ground or buildings thereon by their working thereof, as such damages shall be ascertained by two arbiters to be mutually chosen, or by an oversman to be appointed by such arbiters in case of their differing in opinion, with entry at the _____; to be holden, the said piece of ground, by the said _____ and his foresaids, of and under me and my successors in office, ministers of the said parish of _____, as superiors of the same, in feu-farm, fee, and heritage for ever; paying therefor yearly, the said _____ and his foresaids, to me and my foresaids, the sum of _____ sterling, in name of feu-duty, and that at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment at _____ for the half-year immediately preceding, and the next term's payment at _____ thereafter, and so forth yearly and termly in all time thereafter, with interest at the rate of five per centum per annum on each termly payment from the date on which the same falls due until payment thereof; and paying a duplicate of the said annual feu-duty at the term of _____ (*being nineteen years after the term from which the feu-duty begins to run*), and at the term of _____ in each nineteenth year thereafter, with a fifth part more of penalty in case of failure, and interest of each of said payments at the foresaid rate from the time the same falls due during the non-payment; but declaring always, as it is hereby provided and declared, that these presents are granted with and under the several conditions, restrictions, obligations, provisions, and declarations following, viz. : —FIRST,* That the said _____ and his foresaids shall be bound, within two years [*or such shorter space as may be agreed on*] from the last date of these presents, to erect upon the piece of ground hereby disposed a dwelling-house or villa, one or more, with suitable offices, all of stone and lime and covered with slates [*or otherwise specify the nature of the buildings to be erected*], and which shall for the actual erection cost at least the sum of £ _____ sterling [*here specify a sum not less than sixty years' purchase of the feu-duty; but see note (b) to section 13, post p. 485*]; provided always, that no buildings of any other description shall be built on the ground hereby disposed, and the ground unbuilt on shall be used exclusively as gardens or

for planting, or as pleasure grounds, or for ordinary agricultural purposes, except in such cases as a deviation may be specially authorized in writing by me or my successors in office and the said heritors and presbytery; and the said _____ and his foresaids shall be bound and obliged to uphold and maintain the said dwelling-house and offices in good and complete repair in all time thereafter, and of at least the value before mentioned, and not to use the said buildings for any other purpose than that for which they were erected, or than for similar purposes, except by the consent in writing of me or my foresaids and the said heritors and presbytery; farther, the said _____ and his foresaids shall be bound and obliged to keep the said buildings constantly insured against loss by fire with some respectable insurance company, for at least the sum of £ [here insert the sum to be stated above, as the minimum cost of erection of the buildings], and in the event of the said buildings or any of them being destroyed by fire, the whole sum to be received from the said insurance company shall be expended at the sight of me or my foresaids in rebuilding the said buildings, or repairing the damage done by such fire: SECOND, That the said _____ or his foresaids shall be bound, within the space of [here insert a short reasonable time] from the last date of these presents, to enclose the ground hereby disposed with suitable and sufficient fences for division or boundary walls, and thereafter to maintain the said fences in good and complete repair; and the said _____ and his foresaids shall be entitled to erect such fences to the extent of one-half of the breadth or thickness thereof upon the adjoining unfeued ground (if any) forming part of the said glebe on each side, not fronting a road or street; but on the side or sides fronting a road or street, and on the marches with adjoining properties, the said fences shall be built wholly upon the ground hereby feued; and the said _____ or his foresaids shall be entitled to receive payment of one-half of the value of such fences not fronting a road or street, as the same shall be settled by arbitration between the parties if not otherwise agreed upon, from the person or persons who may hereafter feu the adjoining ground in terms of a provision to be inserted in their feu rights; and upon the said _____ or his foresaids receiving such payment, such fences shall thenceforth be mutual property, and be maintained at the joint expense of the parties; but declaring that the said _____ and his foresaids shall have no claim against me or my foresaids for any part of the expense of erecting or maintaining such fences; and farther, the said _____ and his foresaids shall be bound to pay to the adjoining feuars one-half of the value of any fences which may have been or may be erected by such feuars, to the extent of one-half of the breadth or thickness thereof, on the piece of ground hereby disposed, as such value shall be settled by arbitration between the parties, if not otherwise agreed on, and upon the said _____ or his foresaids making such payment, such fence shall thereafter be mutual property, and be maintained at the joint expense of the parties; but declaring that no feuair shall be required to pay for a

boundary wall of a greater height than six feet above the level of the ground, or of a greater thickness than one foot: **THIRD**, That the said and his foresaids shall be bound and obliged always to keep in good and sufficient repair the whole footpaths and gutter or water channel which shall be laid off, or which have already been made on any side of the piece of ground hereby feued, as also the one-half of the road or roads opposite the said ground or fronting any side thereof, when the ground on the opposite side of such road or roads shall have been feued by me or my successors for building purposes, and the whole of such road or roads, where the ground on the opposite side thereof shall not have been feued for said purposes, or until such grounds shall have been so feued, and that to the satisfaction of me or my successors and the said heritors and presbytery; and the said and his foresaids shall further be bound and obliged, so soon as required by me or my foresaids, to pay a proportion of the expense of making common sewers in the roads or streets which shall be laid off, or which have already been made as aforesaid, and of keeping the same in good repair in all time thereafter, corresponding to the extent of such roads or streets along the piece of ground hereby disposed; and it is hereby declared that all such roads, streets, footpaths, gutters, and sewers, and also all buildings and fences, shall be made and executed (in so far as not already done), and shall be maintained at the sight and to the satisfaction of me or my foresaids, or of a person to be named by us [*here will be introduced, when required in the opinion of the superiors, any further or more detailed provisions as to drainage and sewerage, and where feus adjoin or comprehend burn courses, provisions for preventing the pollution of the water as it passes, and for preserving the full use of the stream or burn course for the benefit of the lower ground*]; and further, the said and his foresaids shall pay to me or my foresaids the sum of one guinea towards the expense of laying off the ground hereby disposed: **FOURTH**, That it shall not be lawful to the said or his foresaids to erect upon the said piece of ground buildings of any other description than dwelling-houses and offices thereto, or shops, nor to convert such dwelling-houses, offices, or shops to any other use or purpose, or to erect any of the said buildings so as to project upon the line of the said streets, roads, or footpaths; nor shall it be lawful to the said or his foresaids to erect or carry on upon the said ground, or any part thereof, any soap-work, candle-work, tan-work, slaughter-house, skin-work, dye-work, oil-work, lime-work, distillery, brewery, or to carry on any other manufacture or chemical process of any kind, nor to deposit any nauseous materials, nuisances, or obstructions on the said ground, or the roads, streets, or footpaths adjoining the same, nor to do any other act which may injure the amenity of the place or neighbourhood for dwelling-houses: **FIFTH**, That if the said or his foresaids shall contravene or fail to implement any of the conditions, provisions, restrictions, or obligations herein written, this present right, and all that may have followed thereon, shall, in the option

of me or my foresaids, become void and null, without declarator or other process at law to that effect, any law or practice to the contrary notwithstanding; and also the said _____ and his foresaids shall amit, lose, and forfeit all right and interest in the ground hereby feued, and buildings thereon, which shall thereupon revert to and become the property of me and my foresaids, free and disencumbered of all burdens whatsoever, in like manner as if this feu right had never been granted, and I and my foresaids shall have right to remove the said _____ and his foresaids, and enter into possession and levy the rents of the said subjects in all time thereafter, but without prejudice to the rights and interests of *bona fide* heritable creditors, and without prejudice to the legal rights and remedies of me and my foresaids against the said _____

and his foresaids for payment of the bygone feu-duties and performance of the prestations incumbent on them under these presents prior to the date of such forfeiture; which several conditions, restrictions, obligations, provisions, and declarations before written are hereby declared real burdens upon and affecting the subjects hereby disposed, and are appointed to be set forth at length or validly referred to, in terms of the provisions of "The Titles to Land Consolidation (*Scotland*) Act, 1868," and "The Conveyancing (*Scotland*) Act, 1874," in all future rights, transmissions, and investitures of the said subjects, otherwise the same shall be void and null; and I, with consent foresaid, bind myself and my foresaids to make an extract of the said decree authorizing me to feu the said glebe forthcoming to the said _____ and his foresaids, at their expense, on all necessary occasions, upon a receipt and obligation for redelivery within a reasonable time, and under a suitable penalty; and I, with consent foresaid, assign the rents; and I, with consent foresaid, bind and oblige myself and my foresaids to free and relieve the said _____ and his foresaids of all public, parochial, and local burdens and assessments; and I and the said heritors and presbytery grant warrandice from my and their own proper facts and deeds only; and I, with consent foresaid, consent to registration hereof for preservation; and I, with consent foresaid, direct the whole of this deed to be recorded in the register of sasines.—In witness whereof.

* In a form of feu-charter prepared by Mr T. G. Murray, W.S., and approved of by the Court, as the form to be used in feuing the Glebe of Kirkcaldy, where it was contemplated to erect workmen's houses on some portions of the glebe, the following clause is the provision as regards the erection of houses:—

That the said _____ and his foresaids shall be bound and obliged, within two years [*or such shorter period as may be agreed on*], from the last date of these presents, to erect upon the piece of ground hereby disposed a dwelling-house, one or more, with suitable offices, all of stone and lime, and covered with slates [*or otherwise specify the nature of the buildings to be erected*], and which shall for the actual erection cost at least the sum of £ _____ sterling

[here specify a sum at the rate of not less than £240 for each feu of thirty-six feet of frontage, with a depth of fifty-eight feet, and a proportionally larger or smaller sum for any additional or less frontage and depth, the rate of calculation in the case of extent or depth of a feu over or under fifty-eight feet being taken at one half of the rate for frontage], and the said _____ and his foresaids shall be bound and obliged to uphold and maintain the said dwelling house and offices [or other buildings to be specified] in good and complete repair in all time thereafter, and of at least the value before mentioned; farther, the said _____ and his foresaids shall be bound and obliged to keep the said buildings constantly insured against loss by fire with some respectable insurance company, for at least the sum of £ _____ [here specify the sum to be stated above as the minimum cost of erection of the cost of the buildings]; and in the event of the said buildings or any of them being destroyed or injured by fire, the whole sum to be received from the said insurance company shall be expended at the sight of me or my foresaids in rebuilding the said buildings or repairing the damage done by such fire.

10. *Intimation to be made of application.*—The Court (a) shall appoint the petition (b) to be intimated in the minute book and on the walls in common form, and to be served upon all proprietors of lands and heritages conterminous with the lands proposed to be feued or leased for building; and shall also appoint notice of the petition to be inserted once in the *Edinburgh Gazette*, and once a week for three successive weeks in such local newspaper or newspapers as the Court may think proper (c).

(a) As to the meaning attached to the word “Court,” see section 2, *ante*, p. 471.

(b) Viz., the petition mentioned in sections 5 and 9. A style is given *ante*, p. 475.

(c) The prayer of the petition should ask for the intimation and service here mentioned. The first interlocutor will be in the following terms:—“The Lords having considered the petition, and the “preliminary intimations, and certificates thereof, in terms of the “Statute 29 and 30 Vict. c. 71, appoint farther intimation to be “made in terms of the prayer of the petition, the local intimation “being inserted in the _____ : Grant warrant for service as “craved, and ordain any parties, respondents, to lodge answers to “said petition, if so advised, within ten days after date of service.”

11. *Power of any conterminous proprietor to appear and object in Court.*—It shall be in the power of any proprietor of lands or heritages conterminous with the lands proposed to be feued or leased for building to appear and object to the application being granted, on the ground of injury to the value or amenity of his said lands or heritages, and it shall be in the power of the Court (a), on considering such objections, to give effect thereto by refusing the application in whole or in part (b).

(a) As to the meaning attached to the word “Court,” see section 2, *ante*, p. 471.

(b) Under this clause a conterminous proprietor may object to power being given to feu *for building purposes*, while not objecting to feuing for agricultural purposes; *Macleod*, 4th July 1870, 8 Macph. 955.

12. *Court may remit petition for inquiry into facts.*—After intimation and advertisement aforesaid (a) the Court (b), on considering the petition (c), with or without answers from any party interested (d), may remit to such person or persons as they shall appoint to inquire into the facts stated in the petition, and to report his or their opinion or opinions thereon, and as to any conditions or restrictions subject to which the prayer of the petition should be granted (e).

(a) Viz., those mentioned in section 10, *ante*, p. 483.

(b) As to the meaning attached to the word “Court,” see section 2, *ante*, p. 471.

(c) Viz., the petition mentioned in sections 5 and 9.

(d) As to the parties entitled to object to the petition being granted, see section 11, *supra*.

(e) A remit is first made to the Lord Ordinary in Teind Causes, who remits to a man of skill “to inquire into the facts stated in “the petition, and to report his opinion thereon, and as to the “minimum rate at which, if the petition be granted, the glebe or “any portion thereof should be feued or leased for building, and as

“to any conditions or restrictions subject to which the prayer of the “petition should be granted.” On receiving the report, the Lord Ordinary reports the case to the Teind Court, who dispose of the petition.

13. Court may grant authority subject to certain conditions (a).—The Court may, by order or interlocutor, and subject to any conditions or restrictions they may deem expedient (b), grant such authority, and shall in such order or interlocutor fix the minimum rate at which the glebe or any portion thereof shall be feued (c) or leased for building (d), and shall authorize and empower the petitioner and his successors in office at the sight of the heritors and the presbytery, subject to the provisions of this Act, to grant and dispose of the glebe, or any part or parts thereof, in feu farm, fee, and heritage, for the highest feu duties, or in building leases for the highest rent in grain or in money, that can be got for the same, not being less than the said minimum, and that either by public auction or private contract (e).

(a) As to the meaning attached to the words “Court,” “glebe,” “heritors,” and “presbytery,” see section 2, *ante*, p. 471.

(b) As to the conditions or restrictions which the Court are in the habit of inserting in feu rights, see the model charter printed *ante*, p. 478.

The rule that the feuars shall be bound to erect buildings of the value of at least sixty years’ purchase of the feu duty is not inflexible, and in one case the value of forty-five years’ purchase was sanctioned—*Fogo*, 1st July 1868, 6 Macph. 970.

Although there is no provision authorizing the Court to grant power to feu to any particular person at a specified rate of feu-duty, it was nevertheless held by a majority of the Court in the case of *Stewart (Minister of Wilton)*, 1st July 1868, 5 Scot. Law Rept. 631, that it was competent, under this clause as to conditions or restrictions, to give effect to an arrangement between the minister and a counterminous proprietor who had objected to the prayer of the petition being granted as regarded one lot of the glebe lands, the arrangement being that the proprietor referred to should get a feu for £10 per acre of 10½ acres of the lot in question, and that the remaining portion thereof should be feued for villa residences only. The reporter to whom the petition had been remitted recommended that this arrangement should be sanctioned by the Court; but it is

thought that such an arrangement can competently be carried into effect only under the provisions of section 17.

(c) In the case of *Macleod*, 4th July 1870, 8 Macph. 955, it was held that the power to grant feus of glebes is not limited to feus for building purposes. In that case a conterminous proprietor offered to feu 328 acres of the glebe of Blair-Athole—steep rocky ground, incapable of reclamation for tillage, scarcely improveable for pasturage, and not suited for building purposes. The feu duty offered was 4s. per acre, or about double the grazing value of the land; and this arrangement received the sanction of the Court. In the same case another conterminous proprietor objected to the small glebe of Kilmaveonaig being feued for building purposes, in respect that it was wholly within his policies; and the Court permitted it to be feued for agricultural purposes at £5 per acre.

In the ordinary case, however, the building value, and not the agricultural value, of the land is taken as the *datum* for fixing the minimum feu-duty—*Campbell v. Morison*, 18th Nov. 1872, 11 Macph. 80.

(d) There is no power of leasing except for building purposes.†

(e) The interlocutor pronounced at this stage of the proceedings is generally in the following terms:—“ Authorize and empower the petitioner and his successors in office, ministers serving the cure of the parish of _____, subject to the provisions of the Glebe Lands (Scotland) Act 1866, to dispoise the portions of the glebe described in the Lord Ordinary’s report, on the conditions in all respects proposed by his Lordship; and approve of the form of the feu charter, No. _____ of process; *Quoad ultra* supersede in the meantime further consideration of the petition.”

14. Court may authorize construction of streets, &c. (a).—The Court may also, on such application, authorize the minister to make and construct such streets, roads, passages, sewers, or drains in and through the glebe or any part thereof as the Court on inquiry may find reasonable or expedient, with the view of the more advantageous feuing or leasing thereof (b).

(a) As to the meaning attached to the words “Court,” “minister,” and “glebe,” see section 2, *ante*, p. 471.

(b) A style containing such an application is printed *ante*, p. 475.

15. To whom feu duties, &c. to be made payable (a).—The said feu duties and rents, and the interest

of any monies arising from any sale or sales in fee simple of any part or parts of the glebe invested as herein-after (b) provided, shall be taken payable to the minister and his successors in office serving the cure of the parish for the time, in all time thereafter, and be recoverable by him or them: Provided that on the death of any minister, his widow, heirs, or executors shall have right to and shall be entitled to receive and discharge the said feu duties and rents in the same manner and for the same length of time as is provided by the thirteenth Act of the third session of the second Parliament of *Charles* the Second, passed at *Edinburgh* the twenty-third day of *August* One thousand six hundred and seventy-two, intituled *Act for the Ann due to the Executors of Bishops and Ministers*, with regard to the stipend of the parish as ann (c); and provided further, that in the event of any circumstance causing a vacancy to be prolonged beyond the term during which such widow, heirs, or executors have a right to the said feu duties and rents, it shall be lawful for the heritors of the parish and presbytery of the bounds to uplift and to apply the said feu duties and rents to the provision of spiritual superintendence and the supply of religious ordinances in the parish during the vacancy.

(a) As to the meaning attached to the words "glebe," "minister," "heritors," and "presbytery," see section 2, *ante*, p. 471.

(b) Viz., in section 17, *post*, p. 488.

(c) Viz., the Act 1672, c. 13. As to the nature of ann, and when due, see Duncan's Parochial Ecclesiastical Law, p. 320. The payments of stipend and of ann under the Act referred to are not affected by the Apportionment Act of 1870; *Latta v. Edinburgh Ecclesiastical Commissioners*, 30th November 1877, 5 Rettie 266.

16. *Further provisions as to feu duties* (a).—Subject to the provisions of this Act (b), the feu duties which shall become payable under any contracts, dispositions, or charters of feu, or writs by progress (c), and the

rents under any building leases to be granted in virtue of this Act, shall in all time thereafter belong to the minister, and shall be held and enjoyed by him in lieu and place of the natural possession of such glebe, or the rents, mails, duties, and profits of the same, and subject always to the burden of payment of interest on the permanent burden after referred to (*d*), so long as it subsists: Provided that after feuing out or letting on building lease or selling the said subjects or any part thereof, in virtue of this Act, it shall not be competent for the minister or his successors in office, to make any demand upon the heritors for providing him in a glebe or in any portion of land in lieu of the glebe land so feued, leased, or sold: Provided always, that nothing herein contained shall preclude or prejudice any claim which the minister may have to any additional glebe that might have been competent to him if this Act had not passed.

(*a*) As to the meaning attached to the words "minister," "glebe," and "heritors," see section 2, *ante*, p. 471.

(*b*) Viz., the provisions of sections 15, *ante*, p. 486.

(*c*) Writs by progress are now abolished by section 4 of the Conveyancing Act, *ante*, p. 303 *et seq.*

(*d*) Viz., in section 18, *post*, p. 490.

17. *Right of pre-emption by proprietors whose lands are conterminous with the glebe* (*a*).—When the Court shall have made an order or interlocutor (*b*) granting authority to feu or let on building lease, and fixing the minimum feu duty or rent, any proprietor (*c*) whose lands are conterminous with the glebe mentioned in such order or interlocutor, may, within thirty days of the date of such order or interlocutor, intimate his willingness to feu or lease or to purchase so much of the said glebe at such a rate of feu duty, or rent, or price as the Court may on a consideration of the whole circumstances of the case, and after direct-

ing such inquiry as they may consider necessary, determine (*d*); and if to feu or lease, undertaking to grant security over the whole or such part of his estate, in addition to the said glebe itself, as to the Court shall seem necessary for the regular and punctual payment of the feu duty or rent fixed by the Court (*c*); and on such intimation, and after such rate of feu duty and security therefor, or price, shall have been so fixed, the Court shall, in case of feuing or leasing, interpose its authority to the bond or other writ in security, and decern accordingly, and in case of sale shall pronounce a decree of sale thereof in favour of such heritor, on which he shall be entitled to obtain a charter from the Crown for payment of a blench duty of a penny *Scots* (*f*), and interpose their authority accordingly: Provided always, that such heritor shall not be entitled to obtain an extract of the said decree of sale until the price shall be consigned in one of the chartered banks in *Scotland* for behoof of the minister; and in every case of such sale the price, after deduction of all expenses connected with the application to the Court, shall be invested at sight of the heritors and presbytery on such securities and in such manner as the Court of Teinds shall direct, and the interests or proceeds only shall be paid to the minister: And it is provided further, that it shall be lawful for any heir of entail in *Scotland* to burden the lands and estate of which he or she is in possession as heir of entail lying contiguous to such glebe for the amount of such price, or to give security over the same for the annual payment out of the clear yearly rents and profits of the said lands and estate, the interest of such sum calculated at four and one-half *per centum*, or the amount of such annual payment, not exceeding three pounds *per centum* of such clear yearly rents and profits after deducting all prior burdens and provisions, as the same shall be ascertained by an average of the five years immediately preceding the date of creation of such burden or security.

(*a*) As to the meaning attached to the words "Court," "glebe," "heritors," "presbytery," and "minister," see section 2, *ante*, p. 471.

(b) Under section 13, *ante*, p. 485.

(c) In the case of *Inmie*, 29th January 1868, 6 Macph. 284, the minister, after obtaining authority to feu, lodged a minute stating that the heritors were anxious to acquire a portion of the glebe for the purpose of enlarging the churchyard, and that he had been requested to take the necessary steps for carrying this out; but it was held that the proper party to make such an application was not the minister, but the proprietor or proprietors who desired to acquire the ground.

(d) A minute lodged by a conterminous proprietor under this clause may be withdrawn before any procedure has taken place upon it—*Fogo*, 9th Nov. 1868, 7 Macph. 88.

Such a minute must be unconditional; the offer cannot be limited to a sum or price stated by the proprietor to be the maximum that he is willing to give—*Fogo*, *supra*.

The lodging of a minute by a conterminous proprietor intimating his willingness to purchase does not conclude a personal contract of sale between him and the minister, it being in the power of the Court, at any time before decree of sale is pronounced, to impose conditions for the protection of the benefice. The substitution of sale for feuing requires that the conditions shall be reconsidered—*Gloag v. Rutherford*, 6th Jan. 1873, 11 Macph. 251.

In the ordinary case, the price to be paid by a conterminous proprietor for lands taken under this section is twenty-five times the amount fixed as the minimum feu-duty—*Campbell v. Morison*, 18th Nov. 1872, 11 Macph. 80.

Where two or more conterminous proprietors intimate their willingness to purchase the glebe or the same portion of it, the Court will inquire and ascertain which of them will give the largest price—*Herdman*, 15th July 1868, 5 Scot. Law Rep. 659.

(e) This clause is intended to give sufficient security for the payment of the feu-duty or rent, where it is not proposed to afford such security by the erection of buildings of the necessary value.

(f) The abolition of charters by progress, effected by section 4 of the Conveyancing Act, operates as a repeal of these words; and section 36 of that Act (*ante*, p. 377) accordingly provides that the title of the purchaser may be completed by merely recording the extract decree of sale in the appropriate register of sasines.

18. Provisions as to cost of application to Court
 (a).—The Court, on the granting of any such order or interlocutor (b), or at any time thereafter, on the summary application of the minister on whose application

the interlocutor or order was granted, or his heirs, executors, administrators, or assignees, shall inquire into and ascertain the sums which shall have been paid as the costs, charges, and expenses of applying for and obtaining such order or interlocutor and incidental thereto, and of making and constructing streets, roads, passages, sewers, or drains in or through the glebe or any part thereof (c), and shall decern the amount thereof a permanent burden upon the glebe; and the interest thereof, until extinguished, as after provided (d) or otherwise, shall form a first charge on the whole produce and revenue of the said glebe (e).

(a) As to the meaning attached to the words "Court," "minister," and "glebe," see section 2, *ante*, p. 471.

(b) Under section 13, *ante*, p. 485.

(c) See section 14, *ante*, p. 486.

(d) Viz., in section 19, *infra*.

(e) A bond and disposition in security will be granted to the person who has paid or advanced the amount, and may of course be assigned.

19. *Casualties to be applied to extinction of costs, and provision as to payment of costs.*—As long as any such burden (a) shall remain unpaid, the casualties of superiority (b) which shall become payable under any contracts, dispositions, or charters of feu, or writs by progress for entering heirs or successors (c) to be granted as aforesaid, as well as any payments which may be received from the grantees thereof in respect of the construction of roads, sewers, or drains, shall be invested at the sight of the heritors and presbytery (d), on such securities and in such manner as the Court of Teinds shall approve, as a sinking fund to meet the said burden (e), and the interest of the said fund shall be paid to the minister (d) for the time being; and as soon as the said fund shall amount to a sum sufficient to pay the said burden, the same shall be paid off;

and thereupon the casualties of superiority (*b*) thereafter to become due shall form part of the income of the minister for the time being, and be payable to him.

(*a*) See the immediately preceding section.

(*b*) Section 23 of the Conveyancing Act (*ante*, p. 356) abolishes casualties in feus granted after 1st October 1874, but permits stipulations for the payment of fixed sums at fixed periods. The Court accordingly now authorises the insertion of a clause in feu charters of glebe lands stipulating for the payment of a duplicate of the annual feu-duty at the end of every period of nineteen years—*Browne*, 1st March 1875, 2 Rettie 488.

(*c*) Under section 4 of the Conveyancing Act, *ante*, p. 303 *et seq.*, writs by progress are rendered incompetent from and after 1st October 1874.

(*d*) As to the meaning attached to the words “heritors,” “presbytery,” and “minister,” see section 2, *ante*, p. 471.

(*e*) When the creditor in right of the real burden is willing to accept a partial payment, the Court will, on the minister’s application, direct any casualty that may be received to be applied in part payment of the burden, instead of being invested in the way here provided—*Mackie*, 25th May 1874, 1 Rettie 934.

20. Title, how to be granted (*a*).—The minister, with the consent of the heritors and the presbytery, as certified by the clerk to the heritors and by the moderator and clerk of the presbytery, shall grant, subscribe, and deliver to the feuar or feuars, purchaser or purchasers, lessee or lessees, all contracts, feu charters, dispositions in feu, writs of confirmation, resignation (*b*), clare constat, or acknowledgment, dispositions, conveyances, or other deeds or writs, containing all usual and necessary clauses for feudally conveying and vesting the subjects so feued, sold, or leased, in the parties taking the same on feu or building lease, or purchasing the same (*c*), and the heirs or singular successors (*d*) who shall thereafter acquire right to the same; and the said contracts and other deeds or writs so to be granted shall be deemed and held to be as legal and valid titles of property in feu

and heritage, or fee simple, or lease, (as the case may be), of the properties so feued or conveyed to the several persons in whose favour respectively the same shall be granted, and their heirs and disponees, as if granted by a proprietor or superior with a completed feudal title holding immediately of the Crown, and the subjects so feued or conveyed or leased under the authority of this Act shall be subject to payment of poor-rates, any law or custom to the contrary notwithstanding; and the said contracts and other deeds shall be recorded in the books of the heritors.

(a) As to the meaning attached to the words "minister," "heritors," and "presbytery," see section 2, *ante*, p. 471.

(b) Writs of confirmation and resignation are now incompetent, under section 4 of the Conveyancing Act, *ante*, p. 303 *et seq.*

(c) The mere recording of a decree of sale pronounced under section 17 in favour of a conterminous proprietor is all that is now required, under section 36 of the Conveyancing Act, *ante*, p. 377, in order to complete his title as purchaser.

(d) Section 4 of the Conveyancing Act, *ante*, p. 303, *et seq.*, renders it unnecessary and incompetent for singular successors to obtain charters or writs by progress.

21. *Full value to be stipulated to be paid without taking money by way of fine, &c.*—In all and each of the said contracts and other deeds or writs (a) the full value of the ground thereby feued or leased shall be stipulated to be paid in perpetual annual feu duties, or rents for the endurance of such building leases, in grain or in money, payable half-yearly, without taking any sum or sums of money, or other matter or thing whatsoever, by way of fine, foregift, or grassum; and all casualties of superiority accruing on the renewal of the title to heirs or singular successors shall be taxed at a duplicate of the annual feu duty (b); and all feu duties, casualties, or rents shall be properly and legally secured upon the ground for which the same are payable, and on the buildings that may be erected thereon, under the usual penalties and forfeitures

according to the law and practice of *Scotland* in feu holdings (c).

(a) See the immediately preceding section.

(b) See note (b) to section 19, *ante*, p. 492.

(c) See the form of feu charter, printed *ante*, p. 478.

22. *Minister to enjoy same privilege as other superiors.*—After any such contracts and other deeds or writs shall have been executed (a), the minister (b) shall have and enjoy all the same remedies for enforcing payment of the said feu duties and casualties of superiority thereby stipulated and agreed to be paid (c), and generally all other rights and privileges, which by the law and practice of *Scotland* belong to and are competent to other superiors in feu holdings; and the parties taking any lands in feu under the provisions of this Act, and their heirs and successors, shall have and enjoy all the rights and privileges which by the law and practice of *Scotland* belong and are competent to vassals in feu holdings, in the same manner and to the same effect as if they held the said lands of and under the minister as a superior holding immediately of the Crown.

(a) See section 20, *ante*, p. 492.

(b) Viz., the minister for the time; see section 2, *ante*, p. 471.

(c) As to the remedies now competent for enforcing payment of casualties, and payments in lieu thereof, see section 4 of the, Conveyancing Act, *ante*, p. 303 *et seq.*

23. *Court to pass Acts of Sederunt.*—The Court (a) shall pass such Acts of Sederunt as they may consider necessary to regulate the form of procedure to be adopted under this Act for effectually carrying out the purposes thereof (b).

(a) Viz., the Court of Session as Commissioners for the Plantation of Kirks and Valuation of Teinds; see section 2 *ante*, p. 471.

(b) No Act of Sederunt has been passed in virtue of the powers here conferred.

24. *Saving existing Acts authorizing the feuing of glebes.*—This Act shall not affect any Act of Parliament now in existence affecting the feuing of glebes in *Scotland*, or anything done or contracted to be done thereunder (a).

(a) It is understood that private Acts of Parliament have been obtained authorizing the feuing of the glebes of St Cuthbert's parish, Edinburgh, and the East Church Parish, Dalkeith.

31 & 32 VICTORIÆ REGINÆ,

CAP. XXXIV.

An Act to alter some Provisions in the existing Acts as to Registration of Writs in certain Registers in Scotland.—[25th June 1868 (a).]

(a) The Act took effect from and after this the date of its passing.

WHEREAS by an Act of the first Parliament of His Majesty King *James* the Seventh, held at Edinburgh in the year One thousand six hundred and eighty-five, intituled "*Act concerning the Registration of Writs in the Books of Session*" (a), certain provisions were made as to the registering and extracting of writs registered in the Books of Council and Session, and for the better securing of the lieges and preservation of principal writs, and it was by the said Act statute and ordained, *inter alia*, "that there shall be two minute books kept
 " in every office, in the one whereof there shall be set
 " down the title of writs given in to be registrate, the
 " name of the giver-in, and the date of the ingiving,
 " which is to be subscribed by the clerk or his substitute
 " foreshaid; and all writs so given in shall be
 " booked within the space of one year after the ingiving;
 " and if any party, or one employed by him, shall desire up a writ given in within the space of
 " six months after its ingiving, then the title of the
 " writ, the name of the party, and the date of both
 " ingiving and outgiving of the said writ, shall be
 " insert in the other minute book, and be subscribed

“ by the receiver thereof, that as the one minute book
 “ doth charge, so the other minute book may dis-
 “ charge, the clerk of such writs, and that no writ
 “ given in shall be taken out after the same is
 “ booked : ”

And whereas the giving up of writs to the parties or others employed by them after the same have been given in to be registered in the Books of Council and Session has caused inconvenience, and has been found to interfere with the due and regular booking of the writs (*b*) ; and it is expedient, and will tend to greater regularity and security, that writs, after having been given in to be registered in the Books of Council and Session, should not be given up, but should remain in the custody of the keepers of the registers, subject to the authority and control of the Lords of Council and Session, before being booked, in like manner as after being booked :

(*a*) Viz., the Act 1685, c. 38.

(*b*) As to the practice of withdrawing deeds from the record under the provisions of the Act referred to, see the report of Mr Thomas Thomson, depute-clerk register, printed in 3 D. 1298.

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. *Writs given in to be registered in the Books of Council and Session not to be given out.*—From and after the passing of this Act (*a*) no writ that shall have been given in to be registered in the Books of Council and Session shall be taken out by the party or any one employed by him, nor shall any such writ be given up by the keepers of the register for any purpose at any time, either before or after the same has been booked, excepting only when authority of

the Lords of Council and Session has been expressly given thereto, and then only under such conditions and limitations as may be expressed in such authority (b), anything in the said recited Act (c) or in any other Act or any law or custom to the contrary notwithstanding.

(a) Viz., 25th June 1868.

(b) The only case relating to the effect of this enactment is *Caldwell*, 17th Nov. 1871, 10 Macph. 99, the circumstances of which were the following:—A settlement was after the death of the granter given in to be recorded, and was duly entered in the minute book. An extract was subsequently obtained, when an omission in the testing clause was discovered. The deed not being actually booked, but only entered in the minute book, the principal beneficiary and the law agent who had prepared the deed presented a petition to the Court, within six months after the deed had been given in, praying to be allowed access to the deed for the purpose of supplying the omission. The Court granted warrant to the keeper of the register, on receiving back the extract already issued, to give the petitioners or their agent access to the deed for the purpose of allowing the writer of it, at sight of the keeper, to add to the testing clause the words specified in the prayer of the petition, and appointed a copy of the interlocutor to be appended to every extract that might be issued. Opinions were expressed by Lord Ardmillan and Lord Kinloch to the effect that the interposition of the Court was competent, not only within the period of six months formerly allowed for access, but beyond it, if sufficient cause were shown. As to cases prior to the present Act, where the Court have authorized principal deeds to be taken from the record after the expiry of the six months, see Bell's *Lectures on Conveyancing*, 1st ed., p. 219, 2d ed., p. 228.

(c) Viz., the Act 1685, c. 38.

2. *Writs registered as probative writs not to be given back.*—*Extracts of indentures of apprenticeship may be received in evidence.*—And whereas by an Act of the first Parliament of His Majesty King William, held at Edinburgh in the year 1698, intituled “*Act concerning Registration of Probative Writs*” (a), on the preamble that “it will be of great ease and advantage to the lieges that probative writs be allowed to be registrate, albeit they want a clause of registration,” it was statute and ordained, “that it

“ shall be lawful and liesome to registrate for con-
“ servation all charters granted by subjects, dispo-
“ sitions, bonds, contracts, tacks, reversions, and all
“ other probative writs in any public authentic register
“ that is competent, albeit the said writs want a clause
“ of registration, and the principal to be given back to
“ the party, and the extract to make entire faith in all
“ cases, in the same manner as if the said writs had
“ been registrate by virtue of a clause of registration,
“ except in the case of improbations:” And whereas
the giving back of the principal writs impairs the
utility of the registers of probative writs as registers
for conservation, and has been found to be of evil con-
sequence, affording facility for fraud and for obstruct-
ing the course of justice: Be it therefore enacted,
That no probative writ given in to be registered in any
register under authority of the said last-recited Act
shall be given back to the party, but all such writs
shall remain in the custody of the keepers of the regis-
ters in like manner and subject to the like control as
any writ given in to be registered in virtue of a clause
of registration therein contained, anything in the said
last-recited Act or any other Act or any law or custom
to the contrary notwithstanding. And where it is by
any Act, or by the rules of any corporation or trade,
provided that an indenture of apprenticeship, with a
certificate of service endorsed thereon, may be received
as evidence of such apprenticeship having been duly
served, an extract of such indenture duly recorded in
the register of probative writs, with a certificate of
service endorsed on such extract, may be received as
evidence of such apprenticeship having been duly
served (b).

(a) Viz., the Act 1698, c. 4.

(b) Under the Law Agents Act (36 and 37 Vict. c. 63, sec. 5)
indentures qualifying for the admission of apprentices as law agents
must be recorded in the register of probative writs of the county in
which the same are entered into, and also intimated to the registrar
of law agents within six months from the date fixed for the com-
mencement of the apprenticeship.

3. *Extracts to bear certificate of Stamp Duty.*—All extracts issued after the date of the passing of this Act from the Books of Council and Session, or of any Sheriff Court, or of any register of probative writs, shall have upon them, in such form as may from time to time be prescribed by the Lord Clerk Register, a certificate or marking indicating the *cumulo* amount of stamp duty paid on the principal writ recorded and retained for preservation (*a*).

(*a*) The object of this section is to enable parties to ascertain whether a recorded deed has been sufficiently stamped, without the necessity of inspecting the principal deed in the register.

31 & 32 VICTORIÆ REGINÆ,

CAP. LXIV.

An Act to Improve the System of Registration of Writs relating to Heritable Property in Scotland.—[31st July 1868 (a).]

[“The Land Registers (*Scotland*) Act, 1868.”]

(a) The Act took effect from and after 31st December 1868 ; see section 28, *post*, p. 523.

WHEREAS it is expedient to amend the system of registration of writs relating to lands and heritages in Scotland, to lessen the number of registers, and to facilitate searches thereof (a) :

Be it therefore enacted by the Queen’s most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

(a) The Act does not extend or apply to burgh registers of sasines ; see section 27, *post*, p. 523.

1. *Short title.*—This Act may be cited for all purposes as “The Land Registers (*Scotland*) Act, 1868.”

2. *Interpretation of Terms.*—The term “Register of Sasines,” as used in this Act, shall be held as applying to the registers directed to be kept by the Act 1617, c. 16 (a), for the registration of sasines, reversions, and other writs directed to be recorded therein

by that Act or by any subsequent Act of Parliament (*b*); and the word "Writ," as used in this Act, shall apply to and include all deeds and writings which have heretofore been in the practice of being recorded in these registers (*c*), or which may under the provisions of this Act be recorded in the general register of sasines (*d*).

(*a*) The Act here mentioned, on a recital of the frauds arising through the existence of latent rights, and for prevention thereof, ordained public registers to be kept, in which all instruments of sasine, and all reversions and discharges, or assignments thereof, should be registered. The registers thus established were a general register kept in Edinburgh, and a number of particular or local registers throughout the country, the option being given of recording either in the general register or in the appropriate particular register. This was the foundation of the present system of registration of land rights. As to the abolition of the particular registers, see section 8, *post*, p. 508.

(*b*) The subsequent Acts of Parliament are 1686, c. 19; 1696, c. 18; 1672, c. 16; 1693, c. 13 and 14.

(*c*) The Act does not extend or apply to burgh registers of sasines; see section 27, *post*, p. 523.

(*d*) The particular registers being abolished by section 8, *post*, p. 508.

3. In General Register of Sasines, writs of each county to be kept separate.—The general register of sasines for *Scotland* shall be so kept that the writs applicable to each county shall be entered in a separate series of presentment books (*a*), and the writs shall be minuted in a separate series of minute books (*b*), and engrossed in a separate series of register volumes, in the order of presentment, and where any writ shall contain land in more than one county such writ shall be entered by the ingiver in the presentment book of such of these counties as may be specified in the warrant of registration herein-after (*c*) provided for, and shall be minuted in the minute-book of such of these counties or county as are specified in said warrant, and shall be engrossed at length in the division of the register applicable to one only of the said counties;

and a memorandum shall be entered in each division of the register applicable to the other counties or county in the presentment book of which it is entered as aforesaid, setting forth the volume of the register and the folio or folios of such volume in which such engrossment is made; and such memorandum shall be deemed to be equivalent to full engrossment of such writ in the division of the register wherein such memorandum shall be entered as aforesaid: For the purposes of this Act the barony and regality of *Glasgow* (*d*), and also the stewartry of *Kirkcudbright*, shall each be treated as a county.

(*a*) The presentment book is the book in which writs presented for registration are first entered. The entry is made immediately on the writ being presented, and consists merely of the date and hour of presentment, the title of the writ, the name of the grantor or grantee, and the presenter's signature.

(*b*) The minute book, first established by the Act 1693, c. 14, contains the leading particulars of the writ, with the day and hour of presentment, and the name and designation of the presenter of the writ, who, in terms of that statute, should also sign the minute on the writ being recorded and returned. The entries in it are made in exact conformity with the order of the presentment book; and the writs are engrossed in the register books in the same order. The date in the minute book is held to be the date of registration of the writ. See sec. 142 of the Consolidation Act of 1868, *ante*, p. 270.

(*c*) Viz., in section 4, *post*, p. 504. The matter is now regulated solely by section 141 of the Consolidation Act, *ante*, p. 267.

(*d*) The district embraced in the barony and regality of Glasgow for the purposes of this Act is defined by the following Act:—

34 & 35 VICTORIA.

CHAP. 68.

An Act to determine the Boundaries of the Barony and Regality of Glasgow for purposes of Registration.—[14th August 1871.]

WHEREAS by the third section of the Land Registers (Scotland) Act, 31 and 32 1868, it is enacted that for the purposes of the said Act the barony Vict. c. 64. and regality of Glasgow shall be treated as a county; but doubts are entertained as to the boundaries of said barony and regality:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal,

and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. *Boundaries of the barony and regality of Glasgow.*—For the purposes of the recited Act, the barony and regality of Glasgow shall be deemed and taken to include the parishes of Glasgow Barony, Maryhill, Shettleston, Springburn, Calton, Govan, Gorbals, and Cadder; and for the purposes of said Act no part of the parish of Old Monkland shall be deemed or taken to be within said barony or regality, but the entire parish of Old Monkland shall be deemed and taken to be only within the county of Lanark.

II. *Registration of certain writs registered in the General Register of Sasines to be effectual.*—No writ relating to lands or heritages within the parishes of Glasgow Barony, Maryhill, Shettleston, Springburn, Calton, Govan, Gorbals, Cadder, and Old Monkland, or any one or more of those parishes heretofore registered in the general register of sasines in the division thereof applicable to the barony and regality of Glasgow, or in the division thereof applicable to the county of Lanark, or in the division thereof applicable to the county of Renfrew, shall be open to objection in respect that such writ ought to have been registered in one or more of said other divisions; and all such writs shall be held to be, and shall be sufficiently registered, notwithstanding any such objection.

III. *Registration of certain writs registered in particular Registers of Sasines to be effectual.*—No writ relating to lands and heritages within the parish of Old Monkland heretofore registered in the particular register of sasines for the barony and regality of Glasgow, or in the particular register of sasines for the county of Lanark, shall be open to objection on the ground that such writ should have been registered in the other of the said two registers; and all such writs shall be held to be, and shall be sufficiently registered, notwithstanding any such objection.

IV. *Saving the preference of writs validly registered.*—Provided always, that no provision of this Act shall operate to invalidate or in any way affect injuriously any writ validly registered in the proper register prior to the passing of this Act, or any rights depending thereon.

4. *All Writs shall have a Warrant of Registration endorsed thereon, specifying county or counties in which lands lie (a).*—All writs which may be recorded in the general register of sasines in terms of this Act shall, previous to being presented for registration, have a warrant endorsed or written thereon in or as nearly as may be in the form of Schedule (A.) No. 1. hereto annexed, specifying the person or persons on whose behalf the writ is so presented, and the county or counties in which the lands to which such writ has reference are situated, and signed by such person or persons, or his or

their agent or agents; and the form of warrant of registration hereby prescribed shall supersede and be used in place of the form of warrant of registration as given in Schedule (A.) No. 1. annexed to "The Titles to Land (*Scotland*) Act, 1858." And in the case of an assignation of an unrecorded conveyance in virtue of the provisions of the 13th section of the said "Titles to Land (*Scotland*) Act, 1858," the warrant of registration to be employed shall be in or as nearly as may be in the form of Schedule (A.) No. 2. hereto annexed; and that form of warrant of registration shall supersede and be used in place of the form of warrant given in Schedule (A.) No. 2. annexed to the said "Titles to Land (*Scotland*) Act, 1858." And warrants of registration may be signed either by an individual agent, or by the subscription of any firm of which such agent may be a partner. And the form of warrants of registration hereby prescribed shall have the same legal force and effect as is conferred on the forms of warrants of registration annexed to the said "Titles to Land (*Scotland*) Act, 1858," with references to the conveyances for which such warrants are prescribed by the said last-mentioned Act.

(a) The object of this section was to adapt warrants of registration to the new system introduced by the preceding section. An enactment in almost identical terms was contained in section 141 of the Consolidation Act, *ante*, p. 267. This anomaly was occasioned by the uncertainty whether both Acts (which ultimately received the royal assent on the same day) would be passed in the same session; and the present section thus deals with the Titles to Land Act of 1858 as a subsisting Act. The above-mentioned section of the Consolidation Act, which is applicable to writs recorded in the burgh registers as well as to those recorded in the general register of sasines, being thus the one really operative, the present section of the Land Registers Act and the relative forms of warrant, No. 1 and No. 2 of Schedule (A.), have been repealed by the Statute Law Revision Act of 1875 (38 and 39 Viet. c. 66).

SCHEDULE (A.)

No. 1. (a).

Warrant of Registration on a Writ to be registered for publication.

Register on behalf of *A.B.* [*insert designation*] in the register of the county of *C.* [*or if the writ contains land in more than one county, in the registers of the counties of C., D., E., and F.*] [*or Register, &c., along with assignation (or assignations) or writ of resignation hereon, in the register of the county of C., or in the registers of the counties of C., D., E., and F., or otherwise as the case may be*].

(Signed)

A.B.,

[*or*] *G.H.,* W.S., Edinburgh, agent.

[*or*] *J.K. & L.,* W.S., Edinburgh, agents.

[*or as the case may be.*]

No. 2. (a.)

Warrant of Registration on a Writ when presented with Assignment apart, or Notarial Instrument for publication.

Register on behalf of *A.B.* [*insert designation*] along with the assignment [*or assignments, or notarial instrument*] docquetted with reference hereto [*or otherwise as the case may be*] in the register of the county of *C.* [*or if the writ and assignment, or assignments, or notarial instrument have reference to land in more than one county, in the registers of the counties of C., D., E., and F.*]

(Signed) *A.B.*,
 [or] *G.H.*, W.S., Edinburgh, agent.
 [or] *J.K. & L.*, W.S., Edinburgh, agents.
 [*or as the case may be.*]

(a) Repealed by the Statute Law Revision Act of 1875 ; see note (a) to the preceding section, *ante*, p, 505.

5. *Competent to record writs in other county or counties to which they refer by new warrant.*—Provided always, That where any writ (a) containing lands or heritages in more than one county shall not have had a warrant of registration endorsed or written thereon applicable to all the counties to which it applies, the registration of such writ shall, notwithstanding, as regards the county or counties mentioned in the warrant, and in the minute books and register volumes of which county or counties it has been recorded, or a memorandum thereof entered, be effectual; and it shall be competent afterwards to present such writ by a new warrant of registration thereon, and to minute and register such writ in the register of any other county or counties to which such writ applies in terms of such new warrant; and in the case of such subsequent registration it shall not be necessary to engross the writ at length in the division of the register applicable to such county or counties, but the same may be effected by the insertion of a memorandum in such division of the register in the manner herein-before (b) provided for, and such subsequent registration shall be effectual as regards the county or counties to which such writ applies, and to which such new warrant is applicable, of and from the date of such subsequent registration.

(a) The word "writ" applies to and includes all registerable deeds and writings; see interpretation clause (section 2), *ante*, p. 501.

(b) *Viz.*, in section 3, *ante*, p. 502.

6. Provision for Writs transmitted by post to General Register of Sasines.—Where any writ (a) shall be transmitted by post for registration in the general register of sasines, the keeper of said register shall, upon the receipt of such writ, cause the same to be acknowledged to the sender, and to be presented in terms of the warrant of registration thereon by a clerk in his office to be appointed by him for that purpose, and who shall be held as the ingiver of the writ; and such clerk shall attach to his signature in the presentment book the words "transmitted by," and thereafter the name of the sender; and such writ shall be recorded in the same manner as any other writ presented for registration; and on the writ being ready for delivery intimation to that effect shall be made by post to the sender, accompanied by a note of fees, and on receipt of the fees and postage, and a request to that effect, the keeper shall transmit the writs to the sender by post; and where two or more writs transmitted by post shall be received by the keeper at the same time, the entries thereof in the presentment book and minute book shall be of the same year, month, day, and hour, and such writs shall be deemed and taken to be presented and registered contemporaneously.

(a) The word "writ" applies to and includes all registerable deeds and writings; see interpretation clause (section 2), *ante*, p. 501.

7. Registration how to be made, &c.—Registration of writs in the general register of sasines shall, except in so far as altered by the provisions of this Act, continue to be made in conformity with the practice heretofore in use; and no error or omission in any presentment book of the general register of sasines to be kept

as aforesaid shall invalidate, or in way affect injuriously, the registration of any writ recorded in said register (a).

(a) From the fact that writs are entered with the utmost brevity in the presentment book, errors or omissions are apt to occur. The practice of keeping a presentment book, from which writs might be more leisurely entered in the minute book, had no statutory sanction prior to the present Act.

8. *Particular Register of Sasines abolished.*—The whole particular registers of sasines in *Scotland* shall be discontinued not later than the 31st day of *December* 1871; and it shall be competent to the Lord Clerk Register of *Scotland* from time to time prior to the said date, upon the application of the keeper of the general register of sasines, to order the discontinuance of any particular register of sasines, and the Lord Clerk Register shall cause such order, signed by him, to be recorded in the general register of sasines, and a copy of such order, also signed by him, to be transmitted to the keeper of the particular register of sasines to which it applies, and shall cause such order to be advertised in the *Edinburgh Gazette*, and in any newspaper or newspapers he may deem proper; and such order shall specify the day, not being less than one calendar month after the date of such publication in the *Edinburgh Gazette*, from and after which such particular register is to be discontinued; and after the date so to be specified in any such order as regards the particular register to which such order shall apply, and after the said 31st day of *December* 1871 as regards all other particular registers, it shall not be competent to present, or for the keeper of the said particular register to receive, any writ for registration therein; and all writs which, previous to the discontinuance of the said particular registers respectively, might competently have been presented for registration therein, shall after said discontinuance be registrable only in the general register of sasines; and registration

in the general register of sasines as herein-before directed to be kept for separate counties shall have all the force and effect previously attached to registration in such particular registers of sasines respectively (a).

(a) Under this section the various particular registers of sasines terminated at the following dates respectively :—

Aberdeen, &c., Feb. 6, 1869.	Kincardine, &c., Feb. 6, 1869.
Argyll, &c., Jan. 12, 1871.	Kinross, Dec. 31, 1871.
Ayr, Sep. 30, 1869.	Kirkcudbright, &c., Sep. 30, 1869.
Banff, Feb. 27, 1869.	Lanark, Mar. 17, 1869.
Berwick, Mar. 17, 1869.	Linlithgow, &c., Feb. 6, 1869.
Bute, &c., Jan. 12, 1871.	Nairn, &c., Feb. 27, 1869.
Clackmannan, &c., Jan. 12, 1871.	Orkney, Feb. 6, 1869.
Caithness, Feb. 27, 1869.	Peebles, &c., Sep. 30, 1869.
Cromarty, &c., Feb. 6, 1869.	Perth, Jan. 12, 1871.
Dumbarton, &c., Jan. 12, 1871.	Renfrew, &c., Mar. 30, 1871.
Dumfries, &c., Sep. 30, 1869.	Ross, &c., Feb. 6, 1869.
Edinburgh, &c., Feb. 6, 1869.	Roxburgh, &c., Sep. 30, 1869.
Elgin, &c., Feb. 27, 1869.	Selkirk, &c., Sep. 30, 1869.
Fife, Jan. 12, 1871.	Shetland, Feb. 6, 1869.
Forfar, Feb. 27, 1869.	Stirling, &c., Jan. 12, 1871.
Haddington, &c., Feb. 6, 1869.	Sutherland, &c., Feb. 6, 1869.
Inverness, &c., Feb. 6, 1869.	Wigton, Sep. 30, 1869.

9. *Printed Abridgments, &c., and Indexes, to be prepared contemporaneously with Record.*—Printed abridgments and printed indexes, both of persons and of places, applicable to each county in *Scotland*, in the form heretofore in use in the General Register House, or in such other form as may from time to time be prescribed by the Lord Clerk Register, shall, from and after the discontinuance of all the particular registers of sasines directed to be discontinued as aforesaid, be prepared under the superintendence of the keeper of the general register of sasines, and as nearly as possible contemporaneously with the minute books and volumes of the register; and such indexes shall be consolidated from time to time for such periods as may be deemed expedient: Provided always, that it shall be lawful at any time for the Lord Clerk Register, if he shall think fit, to direct that abridgments shall

cease to be prepared separately from the minutes, and in that case, and in lieu of the preparation and printing of said abridgments, the minutes shall be printed under the superintendence of the keeper of the general register of sasines, in lieu of printing such abridgments (a).

(a) All searches for incumbrances affecting lands had formerly to be made by an examination of the M.S. minute-books, both for the general and particular registers. This system involved a great amount of trouble, and frequent reference to the register volumes themselves for particulars not contained in the minutes as then framed. To remedy this inconvenience the late Depute-Clerk-Register, Mr Thomas Thomson, in 1821 commenced the preparation of a series of abridgments, dating from 1st January 1780, by which the whole writs recorded either in the general register of sasines or in the particular registers were abridged in a uniform style, embracing the particulars of the deeds and the lands affected by them. These abridgments were arranged in chronological order, and printed in separate volumes for each county; and for each of these volumes an index of persons, and also for a certain period an index of places, were prepared. The index of places involved in its preparation so much labour, and was for the purposes of searching of so little practical value, that it was eventually discontinued. But the abridgments and relative indexes of persons have been carried on and are now completed for all the counties from 1780 down to 1860, for several of the counties down to 1864, and for others down to 1868 inclusive. By this means the necessity of examining one or more independent series of minute-books in making a search was dispensed with.

On the whole of the particular registers being abolished by the operation of this Act, it was considered desirable to avoid the expense and labour of preparing a series of abridgments and indexes, separate from the minute-books and the indexes which it is provided were to be prepared under the superintendence of the keeper of the register of sasines. Accordingly, the minute-books for each county are now printed and indexed as nearly as possible contemporaneously with the registration of the writs, and are issued in yearly volumes with the indexes prefixed. The issue of the abridgments in the older form, with relative indexes, will, however, proceed until the period from 1780 to 1st January 1871 (when the new series commenced) is completed.

10. *Printed Abridgments, &c., and Indexes, to be transmitted to counties.*—The keeper of the general register of sasines shall transmit the said printed abridg-

ments, or printed minutes and indexes (a), from time to time as the same are prepared, to the department of the Lord Clerk Register; and the Lord Clerk Register shall as soon as possible thereafter furnish to the sheriff clerk of each county a printed copy of the abridgments or minutes and indexes for such county, and shall also furnish to each such sheriff clerk, as soon as prepared and transmitted to his department as aforesaid, a printed copy of each consolidated index applicable to such county; and where in any county there shall be a resident sheriff substitute and depute sheriff clerk, in addition to those at the county town, it shall be in the power of the Lord Clerk Register, on application made, to direct that copies of the abridgments or minutes and indexes for such county shall be also sent to such depute sheriff clerk in the same manner as to the principal sheriff clerk; and such abridgments or minutes and indexes so furnished to the sheriff clerks shall be made patent by them to the public on payment of such reasonable fees as may be fixed by the Lord Clerk Register, with the sanction of the Lord President of the Court of Session, the Lord Advocate, and the Lord Justice Clerk, which fees shall be accounted for by the sheriff clerks to the Lord Clerk Register as part of the fees of his department (b).

(a) See the preceding section, and note thereto.

(b) See Table of Fees in the Lord Clerk Register's department, printed *post*, p. 526.

11. *Surplus copies of former Abridgments to be sent to counties.*—And whereas there are in the possession of the Lord Clerk Register certain spare or surplus copies of the printed abridgments of sasines, commencing with the year 1871, which have been prepared and printed from time to time, and which will be continued according to the form presently in use up to the date when each particular register shall be discontinued under the provisions of this Act (a): Such copies shall,

so far as possible, be distributed by the Lord Clerk Register to the different counties, by depositing with the sheriff clerk or sheriff clerk depute of each county a copy of the abridgment applicable to that county.

(a) As to the dates when the particular registers were discontinued, see note (a) to section 8, *ante*, p. 509.

12. *Registration in General Register of Sasines equivalent in certain cases to registration in the Books of Council and Session.*—It shall not be necessary to register in the Books of Council and Session for the purpose of preservation, or of preservation and execution (a), any writ competent to be registered in the general register of sasines, and which shall have been so registered, and such writ, being registered in the said register of sasines, shall be held to be registered also in the Books of Council and Session for preservation, or for preservation and execution, as the case may be: Provided such writ when presented for registration in the said register of sasines, shall, in the warrant of registration prescribed by this Act (b), have an addition specifying that the writ is to be registered for preservation, or for preservation and execution, as well as for publication, in or as nearly as may be (c) in the form of Schedule (A.) No. 3. hereto annexed; and the writ, with such warrant, being so registered in the said register of sasines, shall not be redelivered to the ingiver, but an extract only (containing as part of said extract, where the writ is registered for execution, a warrant for execution,) shall be delivered, which extract may be issued without abiding the actual booking in the register of sasines, and shall be in the form, as nearly as may be, of the Schedule (B.) to this Act annexed, and shall be signed on each page by the keeper of the register of sasines, or a deputy duly commissioned by him to that effect (d); and all writs so presented to be registered for preservation and execution shall, after having been engrossed in the general register of sasines in terms of law, be periodically

transmitted by the keeper of the register of sasines to the Lord Clerk Register or his deputies, through the office of the keeper of the register of deeds and probative writs and protests in the Books of Council and Session, or otherwise, as the Lord Clerk Register shall prescribe, and shall be indexed, either separately, or along with other writs registered in the Books of Council and Session, as the Lord Clerk Register may direct (*e*); and such registration in the general register of sasines shall have all the legal effects of registration in the Books of Council and Session for preservation, or for preservation and execution, as the case may be, as well as of registration in the general register of sasines: Provided always, that no writ shall be held to be registered for the purpose of execution which does not contain a procuratory for registration, or clause of consent to registration, for the purpose of execution, in the body of the writ (*f*); and extracts as aforesaid, one or more, of all writs so registered in the said register of sasines may be issued at any time by the keeper of the register of sasines, or, after transmission as aforesaid, by the deputy keeper of the records, or by any one having their authority respectively; and all such extracts, and the warrants of execution therein contained, shall have all the like force and effect as any extract from the Books of Council and Session, or as any warrant of execution contained in or appended to such extract, or as any extract from the general register of sasines, according to the existing law and practice; and such extracts, in terms of this Act, shall be equivalent to the registered writs themselves, except where any writ so registered shall be offered to be improven (*g*); and all extracts issued in terms of this Act shall have upon them, in such form as may from time to time be prescribed by the Lord Clerk Register, a certificate or marking indicating the cumulo amount of stamp duty paid on the principal writ recorded and retained for preservation (*h*).

(*a*) As to registration for preservation, or for preservation and execution, see section 138 of the Consolidation Act, *ante*, p. 264.

Section 6 of 40 and 41 Vict. c. 40, printed *post*, p. 533, provides that writs registered under the present section for preservation only may afterwards be registered for preservation and execution.

(b) Viz., in section 4, which is now repealed, having been superseded by section 141 of the Consolidation Act.

(c) There can be no need, in any case, to deviate from the words of the schedule.

(d) It is provided by section 5 of 40 and 41 Vict. c. 40, printed *post*, p. 532, that "extracts of all writs registered in and issued from the office of the general register of sasines shall be signed, on the last page thereof, by the keeper of the said register, or by a deputy duly commissioned by him to that effect, and no further signature on any other page of such extracts shall be necessary. But each sheet of all such extracts shall be impressed with an office seal or stamp to be kept in the respective offices of the said keepers; provided that it shall be necessary and sufficient in the case of marginal additions occurring in any extract that the same shall be authenticated by the signature of the officer certifying such extract."

(e) They are indexed separately, in an index supplementary to the index of the register of deeds for the year.

(f) As to the import of such procuratory or clause of registration, see section 138 of the Consolidation Act, *ante*, p. 264.

(g) That is to say, the extracts are equally probative with the principal writs themselves, except where it is averred that these are false and forged.

(h) The object of this clause is to enable parties to ascertain whether a recorded deed has been sufficiently stamped, without the necessity of inspecting the principal deed in the register.

SCHEDULE (A.)

No. 3.

Warrant of Registration on a Writ to be registered for preservation, or preservation and execution, as well as publication (a).

Register on behalf of *A.B.* [*insert designation*] for preservation [*or preservation and execution*], as well as for publication in the register of the county of

C. [or in the registers of the counties of *C.*, *D.*, *E.*, and *F.*]

(Signed) *A.B.*,

[or] *G.H.*,

W.S., Edinburgh, agent.

[or] *J.K. & L.*,

W.S., Edinburgh, agents.

[or as the case may be.]

(a) As to warrants of registration generally, see sections 15 and 41 of the Consolidation Act, *ante*, pp. 46 and 267.

SCHEDULE (B.)

Extract of Deed, containing Warrant of Execution (a).

At Edinburgh the day of , one thousand eight hundred and , between the hours and forenoon [or as the case may be], the writ with warrant of registration thereon, herein-after engrossed, was presented by [insert name and designation of presenter] for registration in the general register of sasines for publication, and also as in the books of the Lords of Council and Session for preservation [or for preservation and execution, as the case may be], and is, with said warrant of registration, recorded in the register of sasines as follows:—

[Insert full copy of the deed and warrant of registration, and where deed is recorded for execution, insert warrant for execution as follows:—]

And the said Lords grant warrant to messengers-at-arms in Her Majesty's name and authority to charge the party or parties aforesaid, bounden by the foresaid writ, personally, or at his, her, or their respective dwelling place or places if within Scotland, and if furth thereof, by delivering a copy or copies of charge at the office of the keeper of the record of edictal citations at Edinburgh, to pay, implement, and perform

the whole sum or sums or obligations, or any of them, specified in the said writ, all in terms and to the effect therein contained, and that to the party or parties to whom the said sum or sums or obligations are, by the terms of said writ, payable or undertaken, within six [or fifteen, *as the case may be*] days if within Scotland, and if furth thereof, within twenty-one days next after he, she, or they are respectively charged to that effect, under the pain of poinding and imprisonment, the term or terms of payment being always first come and bygone; and also under deduction of any sum or sums paid to account (if any); and also grant warrant to arrest the said party or parties bounden as aforesaid, his, her, or their readiest goods, gear, debts, and sums of money, in payment and satisfaction of the said obligations, or any of them; and if the said party or parties bounden as aforesaid fail to obey the said charge, then to poind the said party or parties bounden as aforesaid, his, her, or their readiest goods, gear, and other effects; and if needful for effecting the said poinding, grant warrant to open all shut and lockfast places in form as effeirs.

Extracted on this and the preceding pages by me, keeper of the general register of sasines [or deputy keeper of the records, *or other officer duly authorized, as the case may be*].

(Signed)

A.B.

(a) By 40 and 41 Vict. c. 40, sec. 1, printed *post*, p. 529, a short form of extract is provided for documents containing a clause of registration for preservation and execution, and registered in the register of deeds and probative writs and protests in the Books of Council and Session. That enactment, however, does not appear to apply to registration in the general register of sasines under section 12 of the present Act.

13. *No higher Fees to be chargeable for Writs registered for preservation and execution as well as publication.*—No fees shall be chargeable at the office of the keeper of the register of deeds and probative writs and

Page 516, line 9.

Imprisonment for ordinary debt having been abolished by 43 and 44 Vict. c. 34, the Court of Session, on 8th January 1881, passed an Act of Sederunt, which after reciting 1 and 2 Vict. c. 114, sections 1 and 9, 40 and 41 Vict. c. 40, sections 1 and 2, and 43 and 44 Vict. c. 34, section 4, provides that:—

"I. In extracts of decrees and acts of the Court of Session and of the Sheriff Courts prepared and issued under authority of the first recited statute, the warrant appointed to be inserted by the said Act shall no longer contain the words 'under the pain of poinding and imprisonment,' but in place thereof shall contain the words 'under the pain of poinding.'"

"II. But this provision shall not apply to extract decrees for payment of taxes, fines, or penalties payable to Her Majesty, or of rates and assessments lawfully imposed, or to be imposed, or to extract decrees for payment of aliment, or to extract decrees *ad factum prestandum*, in all which cases the forms of warrants shall remain as at present."

See also 45 and 46 Vict. c. 42.

protests in the Books of Council and Session in respect of the registration of any writs in the general register of sasines for preservation, or for preservation and execution, as well as for publication, in terms of this Act (a); and the fees to be charged in respect thereof, and of the extract given out at the time of registration at the office of the general register of sasines, shall be the same, with the addition only of any outlay for the writing and stamps of such extract, as would have been chargeable if the writ had been registered for publication only (b); and the salaries of the principal keeper of the register of deeds and probative writs and protests in the books of Council and Session, and of the assistant keepers, shall be defrayed out of funds to be provided by Parliament for the purpose; and the fees of the department shall be accounted for in such manner as the Commissioners of the Treasury shall direct.

(a) Viz., in terms of section 12, *ante*, p. 512.

(b) See Table of Fees in the sasine and horning offices, printed *post*, p. 528.

14. *Registered Writs to be authenticated.*—The certificate of registration on every writ that shall be registered in the general register of sasines, and redelivered to the ingiver, shall be signed by the keeper of said register, or a deputy duly commissioned by him to that effect; and no further signature in order to or in token of such registration shall be necessary to any writ presented for registration in the general register of sasines; but every folio of such writ shall, in token of such registration, be impressed with an office seal or stamp to be kept in the said general register of sasines.

15. *Register of Interruptions of Prescriptions to be discontinued.*—The register of interruptions of prescriptions (a) shall be discontinued as a separate record, and

all writs appropriate thereto may be presented and registered in the general register of sasines in the same manner as any other writs appropriate to said general register of sasines; and registration thereof in the general register of sasines shall have all the like force and effect as registration in the register of interruptions of prescriptions previous to the passing of this Act.

(a) This register was established by the Act 1696, c. 19, for the registration, within year and day, of all executed summonses and instruments of interruption, intended to be made use of for the purpose of interrupting the prescription of real rights.

16. *Particular Register of Inhibitions abolished.*—

The particular registers of prohibitions and interdictions (a) throughout *Scotland* shall be discontinued, and all diligences, executions, and other writings at present appropriate to those registers, or any of them, shall be registrable only in the general register of inhibitions, which shall be the only competent register for the registration of inhibitions and interdictions; and no publication whatever of such diligences, executions, and other writings, other than registration in said general register of inhibitions, shall in future be necessary, but such registration shall for all purposes whatsoever have all the legal effect of the publication at present in use (b).

(a) These registers were established by the Act 1581, c. 119, for the registration of diligence used to debar a person from alienating his heritable property.

As to the alterations effected by modern legislation on the law relating to inhibitions, see sections 155 to 158 of the Consolidated Act, *ante*, p. 284 *et seq.*, and section 42 of the Conveyancing Act, *ante*, p. 386.

(b) As to the publication previously in use, see Campbell's Law of Citation and Diligence, p. 299.

The Court of Session Act of 1868 (31 and 32 Vict. c. 100, section 18) also dispenses with the old form of publication.

17. General Register of Inhibitions and Register of Adjudications to be treated as one register.—The office of the keeper of the general register of hornings, inhibitions, and adjudications shall in time coming be united with the office of keeper of the general register of sasines to the effect that both offices shall be held, and the duties thereof discharged, by one and the same person, and the keeper of the general register of hornings, inhibitions, and adjudications shall keep only one minute book for inhibitions and adjudications, and also for reductions recorded in his office, as herein-after provided for (a), and shall frame only one index applicable to all inhibitions, adjudications, and reductions so recorded; and such minute book and index shall be in such form as may be prescribed by the Lord Clerk Register, and shall be printed, and a copy thereof transmitted in like manner as is provided in regard to the abridgments and indexes kept in the general register of sasines, and shall be made patent to the public on payment of reasonable fees, to be fixed and accounted for as is provided in regard to said abridgments and indexes (b).

(a) The words "as hereinafter provided for," seem to refer to section 20, *post*, p. 520.

(b) See Table of Fees in the Lord Clerk Register's Department, printed *post*, p. 526.

18. Particular Registers of Hornings, &c. not to be affected.—The particular registers of hornings and expired charges (a) shall be continued as at the date of the passing of this Act: Provided always, that where any such register has been heretofore kept as a joint register of hornings and inhibitions, it shall cease to be a competent register for the registration of inhibitions (b).

(a) These registers were established by the Act 1579, c. 75. As to letters of horning, &c., see Campbell's Law of Citation and Diligence, p. 179.

(b) See section 16, *ante*, p. 518.

19. Provision as to Official Searchers.—The Commissioners of Her Majesty's Treasury shall have power, upon the application from time to time of the Lord Clerk Register, to regulate the number of official searchers of the records, and to grant to such searchers such remuneration out of funds to be provided by Parliament for that purpose as their Lordships shall deem fit: Provided that nothing herein contained shall interfere with the right of parties or their agents to employ any other persons to search the records, or shall affect any liability legally attaching to such other persons, or to agents employing them respectively (a).

(a) See the Treasury Minute of 6th August 1877, printed *post*, p. 524, as to the issuing of searches made by means of the search sheets of the General Register of Sasines.

20. Establishment of General Register of Sasines and Inhibitions to be regulated.—From and after and upon the termination of the present existing interest in the office of the keeper of the general register of sasines, or when the said office shall become vacant, the person to be then appointed to the said office, and his successors, shall hold no other office, and shall not, directly or indirectly, by himself or any partner, be engaged in practice before the supreme or any inferior court, and he shall not, directly or indirectly, by himself or any partner, transact any business for profit other than the business devolving on him as keeper of the said register; and from and after the date fixed for this Act taking effect (a) it shall be lawful for the Commissioners of Her Majesty's Treasury, upon the application of the Lord Clerk Register, to regulate from time to time the offices of the general register of sasines, and of the general register of hornings, inhibitions, and adjudications under this Act, and to sanction such increased establishment of deputies, assistants, clerks, or other officers as may be necessary for the purposes hereof, and to fix the salaries and remuneration to be allowed to the officers of the said depart-

ments respectively; and such salaries and remuneration shall be payable out of funds to be provided by Parliament for that purpose; and copies of all minutes made by said Commissioners in pursuance of this section shall be laid before Parliament forthwith, if Parliament be sitting, or if not, within fourteen days after the next ensuing sitting of Parliament.

(a) Viz., 31st December 1868.

21. *Remuneration to Sheriff Clerks.*—It shall be competent to the Commissioners of Her Majesty's Treasury to pay to Sheriff Clerks reasonable allowances for duties discharged by them under this Act out of funds to be voted by Parliament for that purpose.

22. *Power to keepers of registers whose offices are discontinued to apply for compensation.*—It shall be competent for every keeper of any register whose office shall be discontinued under the provisions of this Act to apply to the Commissioners of Her Majesty's Treasury, who shall be empowered, on proof of the average amount of the emoluments received by such keeper, after defraying the expenses of his establishment, and to which emoluments he was personally entitled under the present system of registration, to award to him such compensation as the said Commissioners shall deem just, having regard to the terms of his commission; and such compensation shall be payable out of funds to be provided by Parliament for that purpose: Provided always, that if any person to whom compensation shall be awarded by way of annuity as aforesaid shall be hereafter appointed to any other office in the public service, such compensation shall be accounted *pro tanto* of the salary payable to such person in respect of such other office so long as he shall continue to hold the same.

23. *Responsibilities of keepers of Particular Registers to attach to keeper of General Register.*—The keeper of the general register of sasines shall, from and after the discontinuance of the particular registers, or any of them, be subject to such and the like responsibilities and liabilities for loss and damage by reason of neglects, omissions, or errors in the registration of writs in the general register of sasines as the keepers of the particular registers of sasines have hitherto been and now are subject to with reference to the registration of writs in such particular registers.

24. *Directions and forms may be given by Lord Clerk Register.*—The Lord Clerk Register shall be empowered, if he shall deem it expedient, with the view of facilitating the preparation of the presentment-book and of the minute book, to require that such particulars as he may determine respecting the writ given in for registration shall be delivered therewith, and generally shall be empowered to require such particulars, and to issue such forms and directions, as he may deem requisite or expedient for facilitating registration under this Act, and not being contrary to the provisions thereof (a).

(a) No forms or directions have been issued under the powers conferred by this section.

25. *Power to Treasury to prepare amended Table of Fees of registration.*—The Commissioners of Her Majesty's Treasury shall have power from time to time, after the discontinuance of all the particular registers of sasines in terms of this Act, to prepare amended tables of fees of registration in the register of sasines at *Edinburgh*, and for that purpose to reduce or regulate, and alter or vary, and, if considered expedient, to graduate according to the values of the lands or other subjects to which the fees have reference, all or any of such fees, including the fees of searches

against lands and heritages, or against the proprietors thereof, and to lay such amended tables before the Lord President, Lord Clerk Register, Lord Advocate, and Lord Justice Clerk, and any alteration in the amount of such fees shall be subject to the approval of such Commissioners; and in the preparation of any such amended tables it shall be in view that the fees to be drawn from the said department shall not be greater than may reasonably be held sufficient for defraying the expenses of the said department, or the improvement of the system of registration (a).

(a) The amended table of fees is printed *post*, p. 528.

26. *As to salary and duties of Lord Clerk Register.*—It shall be lawful for the Commissioners of Her Majesty's Treasury to provide out of monies voted by Parliament a salary to the Lord Clerk Register of *Scotland*, and to regulate the duties of such office.

Page 523, section 26.

This section is now repealed by the Lord Clerk Register (Scotland) Act, 1879 (42 and 43 Vict. c. 44), section 1.

27. *Not to extend to Burgh Registers.*—This Act shall not extend or apply to burgh registers of *sasines* (a).

(a) These registers still exist, and in them must be recorded all writs relating to lands which were held *burgage* immediately prior to the commencement of the Conveyancing Act, viz., 1st October 1874; see section 25 of the Conveyancing Act, *ante*, p. 359.

28. *Commencement of Act.*—This Act shall take effect from and after the 31st day of December 1868.

SCHEDULES REFERRED TO IN THE FOREGOING ACT.

SCHEDULE (A.) No. 1. Printed *ante*, p. 505.

No. 2. Printed *ante*, p. 506.

No. 3. Printed *ante*, p. 514.

SCHEDULE (B.) Printed *ante*, p. 515.

TREASURY MINUTE AS TO SEARCHES.

Dated 6th August 1877.

My Lords have under their consideration a letter from the Lord Advocate, in which his Lordship adverts to the arrangements made in pursuance of Treasury Minutes of 27th September 1853 and 24th July 1854, on the subject of searching the records of land rights and others in Scotland, and to the system of search sheets which may be made available for the purpose of abridging and expediting the work of searching the registers of sasines by the introduction of certain amendments in the regulations of the searchers' department of the General Register House, which were framed and issued by the authority of the Treasury Board in 1854, and are printed in the 17th Report of the Deputy Clerk Register for Scotland.

My Lords of the Treasury are advised by the Lord Advocate that any alteration of these regulations must be made by minute of this board. My Lords concur in the recommendations made by the Lord Advocate, and in conformity therewith they give directions that the regulations issued by their authority in 1854 referred to above shall be amended as follows:—

1. When an order for a search in the register of sasines is given to the deputy keeper of the records, comprehending any period for which search sheets exist, the search shall be completed by the official searcher as heretofore down to the period at which search sheets commence for the county division of the register of sasines in which the search is to be made, and the search shall then be transmitted to the keeper of the general register of sasines, who shall himself, or by his deputy appointed for the purpose, complete and certify a search made by the search sheets from the commencement of such search sheets to the latest date, and shall thereafter retransmit the search to the deputy keeper of the records to be given out to the applicant.

2. Where such sheets are in existence for the whole period comprehended in the order, the order shall be at once transmitted by the deputy keeper of the records to the keeper of the general register of sasines, who shall, by himself or by his deputy, as before provided, complete and certify the search, and shall thereafter retransmit it to the deputy keeper of the records to be given out to the applicant.

3. In every case when an order for a search given to the deputy keeper of the records is accompanied by a request that the register shall be searched according to the hitherto existing system (*i.e.*, by means of the abridgments or minutes and indices), and not by the search sheet, such order shall be wholly executed by the official searchers; but in cases where no such request accompanies the order, the search shall, so far as search sheets exist, be made by means of the search sheets.

4. The keeper of the general register of sasines shall issue to such persons as may apply for them, searches extracted from the search sheets as searches in that register, upon payment by means of fee stamps of the same fees as are now charged for searches extending over the same period in the searching department of the Lord Clerk Register's office, or at such other rates as may from time to time be fixed by competent authority.

6th August 1877.

N.B.—Search sheets have been prepared for the Glasgow district, consisting of the county of Renfrew, and the barony and regality of Glasgow, for the period from 1st January 1871 to the latest date; and for the central district, consisting of the counties of Fife, Kinross, Clackmannan, Perth, Stirling, Argyll, Dumbarton, and Bute, for the period from the 1st January 1874 to the latest date; and for all the remaining counties of Scotland from the 1st January 1876 to the latest date.

NOTE.—The system of searching by means of a “search sheet” originated in suggestions made by Messrs Morton and Bannatyne, the Commissioners appointed in 1861 “to report as to the state of “the Registers of Land Rights in the counties and burghs of Scotland.” See pp. 27 *et seq.* of their Report, presented to Parliament in 1863.

By the system hitherto in use, and which will be the only available one where a search is desired for a period preceding the date of commencement of the search sheet for any particular county, a search is made by turning up in the successive volumes of the abridgments or printed minutes (by means of the index of persons) every entry relating to the names contained in the memorandum supplied by the agent desiring the search, in order that the searcher may be satisfied that such entry applies or does not apply to the persons named and to the subjects searched against. On the search sheet system, a folio is opened for every property on the first occasion of a writ being recorded relating to such property, of which a short description taken from the minute is written at the top of the folio. Every subsequent writ relating to the same property is then briefly entered by the officials of the register of sasines, on the same folio, in the order of registration; and as this is done continuously from day to day, and contemporaneously with the work of registration, the search sheet thus presents instantaneously a completed search from the date of its commencement in any county down to any date desired.

FEES IN THE LORD CLERK REGISTER'S DEPARTMENT.

As regulated under Act 31 and 32 Vict. cap. 64.

I. FOR INSPECTION OF THE PRINTED ABRIDGMENTS AND INDEXES OF THE REGISTERS OF SASINES (GENERAL AND PARTICULAR), IN COUNTY ARRANGEMENT, AND OF THE PRINTED MINUTES AND INDEXES OF EACH COUNTY DIVISION OF THE GENERAL REGISTER OF SASINES, THERE SHALL BE CHARGED THE FOLLOWING FEES, VIZ. :—

1. For any period of not more than one year, a fee of 2s.
2. For any period extending from one year to ten years inclusive, a fee of 4s.
3. For any period extending from eleven to forty years inclusive, a fee of 10s.
4. For periods exceeding forty years, a further fee at the same rate as the preceding.

II. FOR INSPECTION OF THE INDEXES OF THE REGISTER OF ABBREVIATES OF ADJUDICATIONS AND THE REGISTERS OF INHIBITIONS, THERE SHALL BE CHARGED THE FOLLOWING FEES, VIZ. :—

1. For any period of not more than one year, a fee of 2s.

FEES IN LORD CLERK REGISTER'S DEPARTMENT. 527

2. For any period extending from one year to ten years inclusive, a fee of 4s.
3. For any period extending from eleven to forty years inclusive, a fee of 10s.
4. For periods exceeding forty years, a further fee at the same rate as the preceding.

III. FOR INSPECTION OF MINUTE BOOKS AND INDEXES OF OTHER PUBLIC RECORDS.

(I.) *For Searches in the Minute Books or Indexes of each class of the Public Records, there shall be charged the following Fees for each and every such Search, viz. :—*

1. For any period under one year, a fee of 1s.
2. For any period extending from one year to ten years inclusive, a fee of 2s.
3. For any period extending from eleven to forty years inclusive, a fee of 5s.
4. For periods exceeding forty years, a further fee at the same rate as the preceding.

IV. FOR EXTRACTS AND CERTIFIED OFFICIAL COPIES.

1. For extracts or certified official copies from the records of Parliament, Privy Council, or Exchequer, or from the original warrants of those several records, there shall be charged per sheet of 300 words or under, as the case may be, a fee of 5s.
2. For extracts or certified official copies from the register of the Privy Seal, the register of signatures, the register of decreets of the Court of Session, the register of abbreviates of adjudications, the register of tailzies, and the register of deeds in the Books of Council and Session, or any other registers not here specified, or from the warrants of any of those several registers, there shall be charged per sheet of 300 words or under, as the case may be, a fee of 2s. 6d.

N.B.—These fees are exclusive of stamp duties and fees of writing.

Note.—The fees exigible under the heads I. and II. of this table shall be held to cover all charges hitherto made in the sasine office and horning office respectively in respect of continuations of searches in the registers of sasines, inhibitions, and adjudications.

(The foregoing Table of Fees in Lord Clerk Register's Department came into operation on 1st April 1873.)

FEES IN THE SASINE AND HORNING OFFICES.

As regulated under the Act 31 and 32 Vict. cap. 64.

I. SASINE OFFICE.

Registration Fees.

The present fees for registration of writs in the general register of sasines are 3s. for every page of 200 words or under, and 7s. 6d. for each writ.

These fees, in the cases after mentioned, will be reduced as follows:—

		For every page of 200 words or under.		And in addition for the writ.	
		s.	d.	s.	d.
When the keeper of the register shall be satisfied that the value of the property to which the writ applies does not exceed £500,		2	0		Nil.
Above £500, but not exceeding £1000		2	3		„
„ 1000, „ „ 2000		2	6		„
„ 2000, „ „ 5000		2	6	7	6
„ 5000,		3	0	7	6

Search Fees.

When fees shall have been paid in the department of the Lord Clerk Register for a search in the register of sasines, no fees will be charged in the sasine office in respect of the continuation in it of such search.

In all other respects the fees charged in the sasine office will remain as at present.

II. HORNING OFFICE.

Register of Inhibitions and Adjudications.

When fees for inspection of the indexes of the register of abbreviates of adjudications or of the general register of inhibitions shall have been paid in the department of the Lord Clerk Register, no fees will be charged for the continuation of such inspection in the horning office.

In other respects the fees will remain as at present.

(The foregoing Table of Fees in Sasine and Horning Offices came into operation on 1st April 1873.)

40 & 41 VICTORIA,

CHAP. 40.

An Act to amend the Form of Warrant of Execution on certain Extracts of Writs registered in the Books of Council and Session and Sheriff Court Books in Scotland; and to provide for the Authentication of certain Extracts of Writs.—[10th August 1877 (a).]

(a) The Act took effect from and after 1st October 1877; see section 8. Section 4, however, is retrospective in its operation.

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by authority of the same, as follows :

1. *Extracts of writs registered in Books of Council and Session to have, in certain cases, warrant for execution.*—*Form of warrant of execution inserted in extracts of all protests, &c.*—In all extracts of writs, deeds, or other documents which contain a clause of registration for preservation and execution (a), and which are registered in the register of deeds and probative writs and protests in the Books of Council and Session in Scotland, the keeper or assistant keeper of the said register shall insert a warrant for execution in the form, or as nearly as may be in the form, of the schedule to this Act annexed (b).

The warrants for execution inserted in the extracts

of all protests of bills, promissory notes, or bankers' notes, or certificates of judgment registered for execution under the Judgments Extension Act, 1868 (c), shall be as nearly as may be in the form of the said schedule to this Act annexed.

(a) As to the registration for preservation and execution, see section 138 of the Consolidation Act, *ante*, p. 264.

(b) The schedule is printed immediately after section 2.

(c) 31 and 32 Vict. c. 54.

2. *Extracts of writs registered in Sheriff Court Books to have warrant of execution in certain cases.*—In all extracts of writs, deeds, or other documents which contain a clause of registration for preservation and execution (a), and which are registered in the Sheriff Court Books of any county in Scotland, and in all extracts of protests of bills, promissory notes, or bankers' notes registered in the Sheriff Court Books, the Sheriff Clerk shall insert a warrant of execution in the form, or as nearly as may be in the form, of the schedule to this Act annexed.

(a) As to the registration for preservation and execution, see section 138 of the Consolidation Act, *ante*, p. 264.

SCHEDULE.

At the day of one
thousand eight hundred and , the deed
herein-after engrossed was presented for registration
in the Books of the Lords of Council and Session [or
Sheriff Court Books of the county of], for
preservation [or for preservation and execution], and
is registered in the said books as follows:—

[*Insert full copy of the deed; and where the deed is
registered for execution, insert warrant for execution,
as follows*]:—

And the said Lords grant [*or the Sheriff grants, as the case may be*] warrant for all lawful execution hereon.

Extracted, &c.

3. *Competent to arrest, charge, and poind by virtue of the extract, with warrant for execution thereon.*—It shall be lawful by virtue of the warrant inserted in any extract under the provisions of the two preceding sections to arrest the readiest goods, debts, and sums of money of the debtor or obligant mentioned in such extract in payment and satisfaction of the sum or sums of money or obligation or obligations therein specified, as also to charge the debtor or obligant therein mentioned to pay the sum or sums of money or to perform the obligation or obligations therein specified within the appropriate days of charge (*a*), under the pain of poinding and imprisonment, so far as competent, the terms of payment or implement being first come and bygone, and if he fail to obey the said charge, then, so far as competent, to apprise, poind, and distrain all his readiest goods, gear, and other effects in payment and satisfaction of the said sum or sums or obligation or obligations, and if necessary for effecting said poinding to open shut and lockfast places.

Page 531, section 3.
See marginal note, *ante*, p. 516.

(*a*) As to the days of charge appropriate to the various cases, see section 138 of the Consolidation Act, *ante*, p. 138, and Campbell's Law of Citation and Diligence, p. 191.

4. *Warrants of execution unchallengeable on certain grounds.*—It shall not be competent to challenge the validity of extracts of writs, deeds, or other documents, or of extracts of protests of bills, promissory notes or bankers' notes, or certificates of judgment as aforesaid (*a*), registered in the Books of Council and Session, or in the Sheriff Court Books, containing warrants of execution, and issued prior to the commencement of

this Act (*b*) from the offices of the register of deeds and probative writs and protests in the Books of Council and Session, or of Sheriff Clerks respectively, on the ground that the forms of such warrants are not in conformity with those prescribed by the Act passed in the first and second years of the reign of Her Majesty Queen Victoria, chapter one hundred and fourteen (*c*).

(*a*) Viz., in section 1.

(*b*) Viz., 10th August 1877.

(*c*) The Personal Diligence Act of 1838.

5. *Extracts of deeds registered in the Books of Council and Session, and register of sasines, to be authenticated.*—Extracts of all writs, deeds, or other documents of what nature soever, which may be registered in the Books of Council and Session, shall be equivalent to the registered writs, deeds, or other documents themselves, except where any writ, deed, or other document so registered shall be offered to be improven (*a*), and such extracts shall be signed, on the last page thereof, by the keeper or assistant keeper of the register of deeds and probative writs and protests in the Books of Council and Session; and extracts of all writs registered in and issued from the office of the general register of sasines (*b*) shall be signed, on the last page thereof, by the keeper of the said register, or by a deputy duly commissioned by him to that effect, and no further signature on any other page of such extracts shall be necessary. But each sheet of all such extracts shall be impressed with an office seal or stamp to be kept in the respective offices of the said keepers; provided that it shall be necessary and sufficient in the case of marginal additions occurring in any extract that the same shall be authenticated by the signature of the officer certifying such extract.

(*a*) That is to say, the extracts are equally probative with the principal deeds, unless these are challenged as false and forged.

(b) As to such extracts, see section 12 of the Land Registers Act, *ante*, p. 512.

6. *Writs registered in the register of sasines for preservation only may afterwards be registered for preservation and execution.*—Where any writ containing in gremio thereof a procuratory or clause of registration for preservation and execution (a) shall have been registered in the general register of sasines (b) upon a warrant of registration for preservation, but not for execution, it shall be competent to present for registration in the said register an extract of such registered writ having a warrant of registration written thereon, bearing that such extract is to be registered for preservation and execution; and it shall be lawful to register such extract accordingly, and to issue one or more extracts thereof with warrant of execution in terms (mutatis mutandis) of Schedule B. annexed to the Land Registers (Scotland) Act, 1868 (c), and every such warrant of execution shall have all the like force and effect as any warrant of execution issued in terms of the twelfth section of the said last-mentioned Act (d); and in making such subsequent registration it shall not be necessary to engross ad longum in the said register the extract so presented, but the registration thereof may be effected by the insertion of a memorandum of such extract in the appropriate division or divisions of the said register, setting forth the volume of the register and the folio or folios of such volume in which said original writ is engrossed, and the insertion of such memorandum shall be deemed equivalent to the full engrossment in the division or divisions of the register in which such memorandum shall be entered as aforesaid of the extract so presented for registration.

(a) As to a procuratory or clause of registration for preservation and execution, see section 138 of the Consolidation Act, *ante*, p. 264.

(b) As to such registration, see section 12 of the Land Registers Act, *ante*, p. 512.

(c) *Ante*, p. 515.

(d) *Ante*, p. 512.

7. *After transmission of volumes of records of Books of Council and Session to the Lord Clerk Register, the deputy keeper of records may issue extracts of any deeds recorded in said volumes, and authenticate the same as well as other extracts.*—Whereas in terms of the twelfth section of the Act passed in the forty-ninth year of the reign of His Majesty King George the Third, chapter forty-two (a), the volumes of records of the Books of Council and Session are, along with the warrants thereof, periodically transmitted by the keeper of the register of deeds and probative writs and protests in the Books of Council and Session, to the Lord Clerk Register or his deputies; Be it enacted, that the deputy keeper of the records, or any officer holding a commission to that effect from the Lord Clerk Register, may at any time issue extracts, one or more, of any writ, deed, or other document registered in said volumes of records transmitted as aforesaid, in the same or in a similar form to the extracts of such writs, deeds, or other documents which might have been issued previous to such transmission. And all such extracts and the warrants of execution therein contained shall have all the like force and effect as any extract from the Books of Council and Session, made and issued previous to such transmission, or as any warrant of execution contained in or appended to such extract; and in all extracts issued as aforesaid, and also in all extracts issued of writs contained in any record in the custody of the Lord Clerk Register, it shall be sufficient that the last page thereof shall be signed by the said deputy keeper of the records or by any officer duly commissioned by the Lord Clerk Register to that effect, and no further signature on any other page of such extracts shall be necessary, but each sheet of all such extracts shall be impressed with an office seal or stamp to be kept in the office of the Lord Clerk Register; provided that

it shall be necessary and sufficient in the case of marginal additions occurring in any such extract that the same shall be authenticated by the signature of the officer certifying such extract.

(a) The section referred to provides that the keepers of the several public records which are by law transmissible to the General Register House shall deliver the successive books or volumes of these records to the Lord Clerk Register or his deputies within three months after the same have been severally completed and filled up.

8. *Commencement and extent of Act.*—This Act shall take effect from and after the first day of October one thousand eight hundred and seventy-seven, and shall apply to Scotland only.

SCHEDULE. Printed *ante*, p. 530.

INDICES.

INDEX.

	Page
Abbreviate of Adjudication may be recorded—	
in the case of heritable securities being adjudged, . . .	428
or recorded lease or assignation in security, . . .	449
Abolition of Charters and Writs by Progress—	
by Conveyancing Act,	303
writs excepted from operation of Act,	303
Abolition of Non-Entry, by Conveyancing Act, . . .	317
Abridgments, Printed, of Minute Books of Register of Sasines.	509-512
Acceptance by Vassal—	
of judicial relinquishment of superiority (now incompetent),	212
of voluntary relinquishment of superiority (now ap- parently incompetent),	215
Accretion validating Writs granted by superior whose title has not been completed,	306
of judicial relinquishment of superiority (now incompe- tent),	212
Acknowledgment of Intimation of Assignation, . . .	466
Acknowledgment, Writ of—	
completion of title of executors-nominate, or disponsee, or legatee of heritable security, or of heir where execu- tors excluded, by	422
form of writ,	246
still competent to use, under Conveyancing Act, . . .	306
heir of party in right of a recorded lease or assignation in security may make up title by,	443
forms of,	444-445
registration of, in recorded leases, equivalent to possession, . . .	453
error in stating character of heir not material,	339
Acquirenda not affected by Inhibition,	289
Acts of Parliament.—See separate Index, <i>post</i>.	

Acts of Sederunt—

power conferred by Consolidation Act on Court of Session to pass,	100, 132, 294
passed under repealed Acts to remain in force till Court pass new Acts,	295
A.S., 3d July 1846, fixing fees payable to certain Sheriffs and Sheriff-Clerks in respect of Crown writs or precepts of <i>clare constat</i> ,	176
A.S., 14th July 1847, to regulate publication of services,	101
A.S., 17th Nov. 1849, making the above permanent,	105
A.S., 27th Jan. 1869, fixing the fees to be paid on Crown writs,	181
A.S., 18th Nov. 1871, anent Inhibitions,	287
power of Court to pass, under the Glebe Lands Act,	494

Act and Warrant of Trustee in Sequestration—

as a connecting link in a series of titles,	86, 87, 447 <i>et seq.</i>
effect of, in competitions with heritable creditors, as to rents,	409

Additional sheets may be added—

for continuation of writs or deeds engrossed on conveyances,	266
--	-----

Adjudication—

in adjudication for debt, unnecessary to conclude for decree of special adjudication,	137
general and special, and general special charges abolished,	138
separate summonses of constitution and adjudication no longer necessary,	139
modern form of summons of constitution and adjudication against an heir for his ancestor's death,	142
action of constitution and adjudication against apparent heir may be insisted in after the lapse of six months from ancestor's death,	143
effect of a decree of adjudication, under the Consolidation Act,	144
do., as amended by the Conveyancing Act,	418
preference, where competing adjudications,	179-180
litigiosity does not begin before registration of notice of summons of,	291
completion of title of adjudger—	
(1) to lands,	419
(2) to heritable securities,	428
(3) to recorded leases and assignations in security,	449, 452, 453

Adjudication, Charter of, abolished, 303

Adjudications, Register of. See Register of Adjudications.

Page 540, "Adjudication,"
line 7.

For "death,"
read "debt."

Advertisements—

Page

of sale under bond and disposition in security, . . . 233

Agents—

signing warrants of registration, 51
 entitled to practise in petitions of service, 134
 mandate required to sign petition of service, 93
 only a Writer to the Signet entitled to prepare the draft
 of a Crown writ, 146
 receiving notice of change of ownership, 307
 monopolies of superior's agents in the preparation or re-
 cording of deeds or instruments annulled, 354

Allocation of Feu-Duty—

may be effected by memorandum, 329
 form of memorandum, 331
 not to prejudice or affect heritable creditors, 330

Alterations in Deeds must be authenticated, 379

Alternative, or a me vel de me Holding—

short clause expressing, 21, 23
 formerly implied, where no manner of holding was ex-
 pressed, unless subinfeudation was prohibited, 25
 not a contravention of a prohibition against subinfeudation, 26
 now impossible, 26

A me Holding—

short clause expressing, 21, 23
 import of such clause, 25
 now implied, in the case of lands not held burgage, where
 no manner of holding is expressed, 26

A me vel de me Holding.—See *Alternative Holding*.

Amendment Acts—

amendments on the Consolidation Act of 1868, effected by
 the Titles to Land Consolidation Amendment Act of
 1869, 1, 3
 amended sections of these Acts substituted by the Con-
 veyancing Act of 1874, 2, 4, 418 *et seq.*
 the Registration of Leases Amendment Act of 1877, 455, 461

**Ancestor's Debts, liability of heir for, not now be-
 yond value of ancestor's estate,** 340

Ann not affected by Apportionment Act, 32, 487

Annus deliberandi—

reduced to six months, in the case of action brought to
 attach heritable estate for debt, 143, 317
 effect of provisions of Conveyancing Act, 143

	Page
Apparent Heir—	
actions of constitution and adjudication against,	138 <i>et seq</i>
<i>annus deliberandi</i> reduced to six months,	143
provisions of Consolidation Act with reference to forfeiture or relinquishment of superiority (now virtually repealed),	200, 218
liability for ancestor's debts not now beyond value of ancestor's estate,	340
renunciation of succession,	341
entering into possession,	341-2
Appeal—	
in petitions of service, for jury trial,	117
in do., against Sheriff's judgment,	119
remit to the Sheriff,	137
against judgments pronounced by Lord Ordinary or either Division of the Court, under the Consolidation Act,	293
Apportionment Act of 1870—	
effect of, on assignation of rents,	32
does not apply to payments of stipend and ann under the Act, 1672, c. 13,	32, 487
Apprenticeship, recording Indentures of,	499
Arrestments, Recall of,	291
Arrestment in Execution,	531
Assignation of Heritable Security,	241 <i>et seq.</i>
<i>See also Assignee of Heritable Security.</i>	
Assignation of Personal Estate—	
of personal bond or conveyance of moveable estate, &c.,	463, 467
intimation of	467
Assignation of Personal Right to Lands.— <i>See Assignation of Unrecorded Conveyance.</i>	
Assignation of Real Burdens,	366
Assignation of Recorded Lease—	
form of,	435, 436
in security,	436, 437
recording of, by assignee,	435, 437
completion of title in other cases,	439 <i>et seq.</i>
preferences regulated by date of recording,	450
decree of reduction of, to be recorded,	452
mode of recording,	452
recording of, equivalent to possession,	453
import of short forms of clauses,	456

Assignment of Rents—

short clause of, in conveyances of lands not held burgage,	22, 23
do., in conveyances of land held burgage,	27, 29
import of such clauses,	30
effect of Apportionment Act of 1870,	32
import of, in bond and disposition in security,	231
import of, in recorded leases and assignments thereof,	457

Assignment of Right of Relief, or other right affecting land not passing under Assignment of Writs—

short form of, provided by the Conveyancing Act,	400
--	-----

Assignment of Unrecorded Conveyance—

may be apart from or written on the conveyance,	71
forms,	74-75
docquet unnecessary to, recorded prior to Consolidation Act,	
docquet essential to, separate from conveyance after commencement of that Act,	74
completion of title of person having right to,	72-76
form of notarial instrument,	78

Assignment of Writs, Clause of—

short clause in conveyance of land not held burgage,	21, 23
do., in conveyance of land held burgage,	27, 29
import of such clauses,	29, 30
import of, in bond and disposition in security,	231
import of, in assignment, &c., of recorded leases,	458
not now necessary in a general disposition,	365
rights and obligations not passing under, how they may be assigned,	400

Assignee of Heritable Security—**Constituted by Infetment :—**

completion of title of— <i>inter vivos</i> ,	
by assignment,	241
form of assignment,	242
assignment to be recorded,	241
notarial instrument may be used,	241
form of instrument,	244
completion of title of— <i>mortis causa</i> ,	
by writ of acknowledgment,	422
form of writ,	246
by notarial instrument,	425
form of instrument,	250

Not Constituted by Infetment :—

completion of title of,	253
form of instrument,	256

	Page
Assignment, Implied, of Superior's remedies for the recovery of feu-duties,	307
Assurance, Assignment of Policy of,	468
Attestation and Authentication of Deeds. See <i>Execution of Deeds</i> .	
Augmentation of Stipend—	
form of assignation of right of relief from,	400
Back Bond or Letter—	
effect of, in qualifying an <i>ex facie</i> absolute disposition,	235-6
or assignation of recorded lease,	437, 440
Bailies of Burghs—	
former duties of, in giving sasine,	360
may take evidence in petitions for service of heirs,	108
writ of <i>clare constat</i> in burgage subjects by provost and,	198
Bankruptcy—	
effect of trustee's act and warrant of confirmation,	409
preferences dependent on date of registration of land rights,	276
section 118 of Bankruptcy Act of 1856 (as to competitions between trustee and heritable creditors) repealed by the Conveyancing Act,	408
effect of this repeal,	409
Bank Stock, transference of,	468
Base Holding, or holding de me, must be expressed,	24
Bastardy, Charter of,	145
Beneficiary of lapsed trust may complete a title to lands,	83, 388
Beneficium Inventarii (service with specification),	130, 341
Bequest of Lands,	63
Bill for Letters of Inhibition,	287-288
Bill—	
letters of inhibition on,	289
notarial subscription of,	384
protest of, may be assigned in the form provided by the Transmission of Moveable Property Act of 1862,	468
Blench-Farm—	
Consolidation Act applies to lands held in,	264
Conveyancing Act includes, under feu-farm,	302
Blind Persons—	
execution of deeds by,	383, 384

Bond of Annual-rent and Bond of Annuity—

included by Consolidation Act under Heritable Security, 7

Board of Corroboration, 393

Bond, Heritable— 7, 235, 261

See also *Heritable Security*.

Bond, Personal—

may be assigned in short form introduced by the Transmission of Moveable Property Act of 1862, . . . 463

intimation of assignation of, 465

old forms still competent, 467

Bond and Assignation in Security—

may be assigned in short form introduced by the Transmission of Moveable Act of 1862, . . . 463, 468

intimation of assignation, 465

old forms still competent, 467

Bond and Assignation in Security, of Lease recorded under the Registration of Leases Act of 1857—

form of, 437

may be recorded, 433

completion of title to, where party presenting for registration not the original assignee, . . . 439, 441

translation of, 441

form of translation, 442

completion of title of heir of party in right of, . . . 443

Do. disponent, do, 445

completion of title of heir or disponent of a person in right of a, unrecorded, 448

Do., do. of a translation of a, unrecorded, . . . 448

Do., do. of executors. See *Addenda*, printed immediately after preface.

completion of title of adjudger of a, 449

Do. of trustee on sequestrated estate of party in right of, 449

to be preferred according to date of recording, . . . 450

discharges of, to be recorded, 450

form of discharge, 451

reductions to be recorded, 452

mode of recording, 452

Bond and Disposition in Security—

short form of, 227

interpretation of clauses in such, 230

registration of, to operate infestment, 227

discharge of, 258

See also *Heritable Security*.

	Page
Booking Tenure in Paisley—	
provisions of Consolidation Act applicable to Burgage Tenure apply also to,	281
distinction between, and feu, abolished by the Conveyancing Act,	360
register of bookings still retained,	360
conveyances of lands held by, may still be in the forms allowed by the Consolidation Act,	363
Brieves from Chancery for Service of Heirs now incompetent,	90
Burdens, Obligations to relieve of.—See <i>Obligation to Relieve.</i>	
Burdens, Conditions, &c., affecting land.—See <i>Conditions.</i>	
Burdens, Real, transfer of.—See <i>Real Burdens.</i>	
Burgage Subjects—	
peculiarities of burgage tenure,	360
Consolidation Act applicable to burgage as well as feudal subjects,	264
short forms of clauses in conveyances of,	29
import thereof,	29
instrument of resignation and sasine (now apparently incompetent),	51-3
completion of title of heir by writ of <i>clare constat</i> from the magistrates,	197
where no burgh register kept, deeds, &c., required to be signed by town clerk before being recorded,	280
distinction between burgage and feudal subjects abolished by the Conveyancing Act in so far as regards conveyancing,	359
proprietors of land previously held burgage may now grant feus,	360
feus previously granted and recorded in burgh register validated,	360
writs affecting land held burgage immediately prior to 1st October 1874 are still to be recorded in burgh registers of sasines,	360
although such land is subsequently feued out,	362
conveyances of subjects hitherto held burgage may be in the same form as of feudal subjects,	359, 363
or in the forms allowed by the Consolidation Act in reference to such subjects,	362-3
but a procuratory of resignation, if inserted, shall be held <i>pro non scripto</i> ,	363

Burgage Tenure.—See *Burgage Subjects*.

Burgh Registers of Sasines—

not affected by the Land Registers Act of 1868,	523
writs affecting land held burgage immediately prior to 1st October 1874 are still to be recorded in,	360
although such land is subsequently feued out,	362
warrants of registration now required on all writings recorded in,	267, 372

Carriages and Services—

annual money payment by agreement for five years to operate commutation,	352
such annual money payment to be held the value of,	352
superior bound to accept the money payment in lieu of,	352
where no agreement, either party may apply to Sheriff,	352
judgment of Sheriff final,	352
entail not to be a bar to commutation,	353
annual money value ascertained by agreement may be stated in a memorandum,	353
form of memorandum,	349
recording thereof, or extract decree of Sheriff to render money value feu duty,	353

Casualties of Superiority—

short form of obligation to relieve of,	22, 23
import of,	30
effect of Conveyancing Act on such obligation,	318
amount of, payable to the Crown,	153
amount of untaxed composition payable to a subject superior,	345
payments in lieu of, in the case of lands conveyed for reli- gious purposes,	218, 324
periods of payment of, by corporations, trustees, and per- sons having separate interests in lands,	324
superior's right to, not lost by implied entry of vassal under the Conveyancing Act,	314
nor enlarged,	314
recovery of, new form of action substituted for declarator of non-entry,	317
form of summons therein,	322
at what time such action may be raised,	316, 319
superior's title must be complete,	319
what casualties may be thus sued for,	320
intervals at which legal casualties are now payable,	320-1, 324
effect of decree for payment of,	317, 321
poining of the ground for, where stipulated for at uncer- tain intervals, but declared <i>debita fundi</i> ,	315

Casualties of Superiority—continued.

redemption of—

what casualties may be redeemed,	343, 344
persons entitled to redeem,	345
terms to be according to agreement,	343
terms of redemption failing agreement,	343
so redeemed, to be discharged,	346
no discharge of, without consent of heritable creditor, to be effectual against him,	346
form of discharge,	347
charter of <i>novodamus</i> may be used for the purpose,	347
mid-superior, as well as proprietor of <i>dominium utile</i> , entitled to redeem,	351
entails not to bar,	350
application of redemption money under entail,	351
commutation of, into feu-duty, superior may elect to commute,	348
memorandum affecting commutation,	349
legal, abolished in feus granted after 1st Oct. 1874,	356
still competent to stipulate for an increase of feu-duty or fixed sums payable at fixed and certain intervals,	356
in feu rights contracted, but not granted, prior to the Con- veyancing Act, superior entitled to,	357
but such casualties may, if desired by either superior or vassal, be converted into an annual feu-duty,	358
payment of, in case of feus of glebe lands,	491, 493

Caution—

in recall of inhibitions,	290
bond of, may be assigned in short form,	468

Caveat may be lodged against a Petition of Service, 106**Certificates, Notarial.**—See *Notarial Certificate*.**Chancery—**

fees in office of, for services,	105, 116
remuneration of clerks of,	116
duties and emoluments of officials of, may be regulated by the Commissioners of the Treasury,	

Chancery, Director of.—See *Director of Chancery*.**Chancery, Precept from.**—See *Precept from Chancery*.**Chancery, Sheriff of.**—See *Sheriff of Chancery*.**Chancery, Sheriff-Clerk of.**—See *Sheriff-Clerk of Chancery*.**Change of Ownership—**

notice of, to superior,	307
-----------------------------------	-----

	Page
Charges, general and special, &c., in actions of constitution and adjudication, abolished,	139
Charge, Execution of—	
registration for execution,	265
form of warrant of execution,	530
warrant to charge heir or disponsee under personal obligation of his ancestor or author,	393
Charters by Progress—	
forms of, under Consolidation Act,	191 <i>et seq.</i>
operated confirmation of all prior deeds,	220
abolished by Conveyancing Act,	303
exceptions thereto,	303
where no distinctive prescriptive possession has followed on, the measure and extent of the vassal's right are to be gathered from the original charter alone,	310
See also <i>Entry</i> .	
Charters from the Crown.— See <i>Crown Charters</i> .	
Charter of Adjudication, now incompetent,	304
See also <i>Adjudication</i> .	
Charter of Confirmation, now incompetent,	304
See also <i>Confirmation, Entry by</i> .	
Charter of Confirmation combined with Precept of Clare Constat, now incompetent,	304
See also <i>Confirmation, Entry by</i> .	
Charter of Novodamus, still competent,	303
See also <i>Novodamus</i> .	
Charter of Resignation, now incompetent,	304
See also <i>Resignation, Entry by</i> .	
Charter of Resignation and Confirmation, now incompetent,	304
See also <i>Resignation, Entry by</i> .	
Charter of Sale, now incompetent,	304
Chartulary, superior not entitled to charge vassal with expense of recording vassal's titles in,	310
Clare Constat, Writ or Precept of—	
From the Crown,	303
competent, but not now used to complete title of heir,	170, 175
forms provided by Consolidation Act to be equivalent to old forms,	165
how obtained,	168, 174
forms of	172, 173

Clare Constat, Writ or Precept of—*continued.*

to be null, unless recorded before first term of Whit-	
sunday or Martinmas,	175
fees to certain Sheriffs and Sheriff Clerks,	175
From subject superiors—	
may refer to <i>tenendas</i> and <i>reddendo</i> ,	191
forms,	193–196
superior bound to grant writ,	193
precept, combined with charter of confirmation (now	
incompetent),	194
in burgage subjects,	197, 198
not to fall by death of the grantor,	199
proceeding on decree of forfeiture or relinquishment (now	
apparently incompetent),	200, 205
authentication of,	219
error in character of heir to be no objection, if heir truly	
entitled to succeed to lands,	339

Clauses—

short forms of, in conveyances of lands not held burgage,	21, 23
do., in conveyances of lands held burgage,	27, 28
import of such short forms,	25, 29
in heritable securities,	227 <i>et seq.</i>
import of clauses in schedules to the Registration of Leases	
Act of 1857,	456
prohibitory, irritant, and resolute clauses or clause autho-	
rising registration in the register of tailzies may in	
conveyances of entailed lands be inserted by reference	
merely,	33
of direction to record part of conveyance,	40
of reference to conveyance containing general designation	
of lands,	45
authorizing registration in the register of tailzies,	45
of registration. See <i>Procuratory or Clause of Registration.</i>	
of resignation. See <i>Procuratory or Clause of Resignation.</i>	

Clerk Register, Lord.—See *Lord Clerk Register.***Commencement of Acts.**—See *Date of Commencement.***Commissioner—**

evidence taken by, in petitions for service of heirs.

Commonty or Common Property—

effect of decree of division of,	376
--	-----

Commutation of Carriages and Services exigible

by Superior,	352, 353
------------------------	----------

See also *Carriages and Services.***Commutation of Casualties.** See *Casualties.*

Companies registered under the Companies Acts of 1862 and 1867.

form of executing deeds by, 410

Compensation—

awarded for loss of fees through the operation of the Services of Heirs Act of 1847, 135, 136
 awarded under the Crown Charters Act of 1847, 184
 of town clerks appointed prior to 8th March 1860, 282
 to the presenter of signatures, and his clerk, 411
 to keepers of registers whose offices are discontinued under the Land Registers Act of 1868, 521

Completion of Title—

every title to lands, &c., now completed by infeftment, 306

Composition, Casualty of—

tendering heir, to evade payment of, where untaxed, 309
 how payment of, may now be evaded, 309-310
 amount of, where untaxed, 345
 not now increased by consolidation of property with superiority, 329
 mode of recovering payment of, 317, 315
 intervals at which to be payable by corporations, trustees, and persons with separate interests in lands, 324

See also *Casualties of Superiority*.

Conditions, real burdens, provisions, or limitations—

may be referred to as already in the register of sasines, 36, 370
 forms of reference, 38, 372
 if appointed to be inserted in instruments of sasine, to be inserted or referred to in any notarial instrument, 274
 effect of abolition of charters by progress on omission to insert or refer to, 310
 may be imported into original grants, by reference to a recorded deed by proprietor of lands, setting forth the conditions under which he is to feu or otherwise deal with lands, 371

Conditions, &c., of Entail—

may be inserted in conveyances, by reference merely, 33
 form of such reference, 36
 effect of such reference, 34

Confirmation, Entry by—

abolished by the Conveyancing Act, infeftment now implying entry by writ of confirmation, 303 *et seq.*
 former provisions as to, with the Crown, 164
 forms of Crown writs and charters, 167, 168

Confirmation, Entry by—*continued*.

former provisions as to, with subject superiors, . . .	185 <i>et seq.</i>
forms of writs and charters by subject superior, . . .	188
writ of resignation proceeding on a decree of forfeiture or relinquishment (now incompetent), . . .	200, 204, 206, 209
authentication of writs,	219, 266

Congregations and Religious Bodies—

successors in office of trustees for, do not require to make up titles to land, &c.,	88
payments in lieu of casualties,	218, 324

**Conquest, distinction between, and heritage,
abolished,**

378

Consignation—

of surplus price, by heritable creditor selling lands, . . .	239, 240
do., in the case of security over a recorded lease, . . .	458
of redemption money of casualties,	350

Consolidation of superiority with property—

how effected,	327
form of minute for effecting,	328
not to affect or extend superior's right,	329
competency of, by resignation <i>ad remanentiam</i> doubtful, .	58
by prescription,	329
not to take place, in the case of Her Majesty's private estates,	413

Consolidation Act of 1868, (31 and 32 Vict. c. 101), . . .

1-298

full title,	1
amendments on, effected by Amendment Act of 1869, . . .	1
amendments on, by Conveyancing Act of 1874,	2
preamble,	2
general plan of,	2, 10
new enactments of,	2
applicable to moveable as well as heritable property, . . .	3
applicable to lands held by any description of tenure, . . .	264
short title, and mode of citing amended sections,	3
date of commencement of,	4
retrospective provisions,	4
interpretation clause,	5
index to do.,	9
mode by which consolidation of previous Acts effected, . . .	2, 9
repealing clause,	9
statutes repealed by,	12
reason for including the whole of the Infestment Act of 1845 in Schedule (A.), No. 2, though only one section repealed,	10

Consolidation Act of 1868—continued.

repealed statutes still in force so far as regards any refer-	
ence made to them in any statute not repealed, . . .	296
competency of using old forms of conveyance, &c., . . .	11, 295
classified table of contents,	

Constitution and Adjudication, Action of—

charges, general and special, &c., abolished,	138
separate summonses unnecessary,	139
form of summons,	142
may be raised against apparent heir after the lapse of six	
months from ancestor's death,	143

Constructive or implied Entry with Superior.—

See Entry with Superior.

Constructive Personal Right of Heir.—See Personal

Right to land under Conveyancing Act.

Conventional Terms.—See Rents.

Conveyance—

definition of, in the Consolidation Act,	6
do. in the Conveyancing Act,	302
short forms of clauses, in the case of lands not held burgage,	21, 23
do. in the case of lands held burgage,	27, 28
import of such forms,	25, 29
of burgage subjects, may now be in the same form as in	
the forms applicable to feudal subjects,	359
or in those allowed by the Consolidation Act in regard to	
burgage subjects,	362
may be recorded in register of sasines, and recording	
equivalent to infeftment,	46
at any time during the life of the party on whose behalf	
presented for registration,	270
in case of error in recording, may be recorded of new, . . .	272
in every case a warrant of registration must be endorsed	
or written on, before recording,	267, 372
notarial instrument may be expedite, where it is not desired	
to record the whole of a conveyance,	53
<i>mortis causa</i> ,	63
assignation of unrecorded,	71
may be partly printed, or lithographed, or engraved, . . .	277
competency of forms of, in use prior to the Acts repealed	
by the Consolidation Act,	295
of real burdens,	366

Conveyancing Act of 1874,

	299-431
title of,	299
preamble of,	293

Conveyancing Act—continued.

Page

provisions of, applicable to moveable as well as heritable property,	299
chief changes on previous law effected by,	299
short title,	300
date of commencement,	300
retrospective provisions,	300
interpretation clause,	301
list, alphabetically arranged, of words defined,	309
schedules to be part of the Act,	430
list of schedules referred to,	431

Corporation—

periods of payments of composition by,	324
<i>See also Casualties of Superiority.</i>	

Corroboration, Bond of, dispensed with in certain cases,

373

Council and Session, Books of—

writs given in to be registered in, not now given back,	497
registration in General Register of Sasines equivalent in certain cases to registration in,	512, 533
form of warrant of execution on extract of writs registered in,	529
authentication of extracts of deeds registered in,	532

*See also Registration for Preservation and Execution.***Court of Session Act of 1868—**

to apply to appeals, &c., under the Consolidation Act, 1868,	123
--	-----

Court of Session—

acting as Court of Exchequer with reference to Crown writs,	150, 180
judgment of, in virtue of Consolidation Act, to be final unless brought under review,	293
authorized to pass Acts of Sederunt fixing fees payable for recording deeds in burgh registers of sasines, &c.,	294
authorized to pass Acts of Sederunt and Rules of Court, under the Consolidation Act,	294

Court of Session, as Commissioners of Teinds—

to direct application of money realised by sale of servitude or right of pasturage,	412
application to be made to, for granting feus or building lease,	472
form of petition,	475
to appoint intimation of application,	483
may remit petition for inquiry,	484

Court of Session, &c.—continued.

may grant authority subject to conditions, . . .	485
may authorize construction of streets, &c., . . .	486
may pass Acts of Sederunt under the Glebe Lands Act of 1866,	494

Courtesy—

heritable securities still heritable <i>quoad</i> ,	223
excludes claim for casualty,	316

Creditors, Heritable—

rights and remedies of, not affected by heritable securities being made moveable as to succession, . . .	257
not affected by discharge of casualties,	346
not affected by allocation of feu-duty,	330
See also <i>Heritable Security</i> .	

Crown, Entry with.—See *Crown Charters and Writs*.**Crown Charters and Writs—**

include charters and writs from the Prince as well as from Her Majesty,	6
what now competent,	145, 305
signatures for, abolished,	145
lodging draft equivalent in competition to presenting signature,	179
how obtained,	146
revisal of draft,	148
rectification of mistakes in former titles,	149
intimation of proposed rectification to be made to solicitor for Commissioners of Woods and Forests, . . .	150
copy of last writ, &c., may be referred to in certain cases, fixing Crown duties,	151
stating objections thereto,	152
amount of casualties payable to the Crown, . . .	156
clerk's fees,	153
copy of revised draft to be furnished to the party applying for,	153
revised draft to be docketed as approved of, . . .	154
preparation of,	154
may be applied for either during session or in vacation of Court,	155
how objections to draft may be stated,	156
objections, how to be disposed of,	157
procedure if objections repelled,	158
refusal of, by Sheriff of Chancery,	158
subject to review of Lord Ordinary,	159
engrossment, execution, and delivery of,	160
sealing of,	160

	Page
Crown Charters and Writs—continued.	
to be valid, and a warrant for infeftment,	162
of resignation (now incompetent) and forms of, 163, 165, 166, 167	163, 165, 166, 167
of confirmation (now incompetent) and forms of, 164, 165, 167, 168	164, 165, 167, 168
equivalent to old forms,	165
writs or precepts of <i>clare constat</i> , how to be obtained, . . .	168
decree of service, special or general, must have been	
previously obtained,	169, 174
form of writ of <i>clare constat</i> ,	171
form of precept from Chancery (of <i>clare constat</i>),	173
writs or precepts of <i>clare constat</i> to be null unless recorded	
before first term of Whitsunday or Martinmas,	175
fees of Sheriffs and Sheriff-Clerks appointed prior to 1st	
October 1845,	176
Register of Crown Writs,	176
charters or writs of <i>novodamus</i> , how to be obtained,	178
to be in the English language,	180
Court authorized to frame regulations,	180
rule of Court fixing fees to be paid on,	181
writs of confirmation and resignation on decrees of for-	
feiture of superiorities (now incompetent),	209, 210
writ of investiture on deed of relinquishment (now in-	
competent),	217
all, operated confirmation of all prior conveyances,	220
Crown Private Estates—	
Crown Private Estates Act of 1862,	413, 414
may be held of the Crown as superior,	413
the <i>dominium utile</i> not to merge in the superiority or be	
consolidated therewith,	413
Curator Bonis—	
completion of title of,	81
Date of Commencement of Acts—	
of the statutes repealed by the Consolidation Act of 1868,	19
of the Consolidation Act of 1868,	4
of the Conveyancing Act,	300
of the Registration of Leases Act,	432
of the Registration of Leases Amendment Act,	456
of the Transmission of Moveable Property Act,	463
of the Glebe Lands Act,	470
of the Registration of Writs Act,	496
of the Land Registers Act,	523
of the Registered Writs Execution Act of 1877,	529
Date of Holograph Testamentary Writings,	383
Date of Notarial Instruments,	57

Debita fundi—

compositions stipulated for at uncertain intervals, . . .	315
See also <i>Pounding of the Ground</i> .	

Debtor—

definition of, in the Consolidation Act,	8
liability of, in heritable security, not affected by change of law as to the succession of the creditor,	257
nor his succession,	224
heir of, no longer liable beyond the value of the estate, . . .	340
personal obligation of, for payment of heritable security, now transmits against his representatives,	393

Debts—

affecting lands excambed,	279
liability of heir for ancestor's,	340

Declarator—

of non-entry abolished,	317
action in lieu thereof,	317, 322
of tinsel of superiority now incompetent,	201
of irritancy <i>ob non solutum canonem</i> still competent, . . .	314
of, and adjudication,	429

Decree—

included by the Consolidation Act under the word Con- veyance,	6
may be recorded in register of sasines (see also <i>Con- veyance</i>),	46
of adjudication.—See <i>Adjudication</i> .	
of division of commonity or common property,	376
of sale of glebe lands,	377
of service.—See <i>Service of Heirs</i> .	

Decree Arbitral—

of division of commonity or common property,	376
--	-----

Deed.—See *Conveyance* and *Execution of Deeds*.**Defeasible Mid-superiority,** 318**De præsentī conveyance—**

words of, unnecessary in <i>mortis causa</i> deeds,	63
---	----

Description of Lands—

by one general name,	43
by reference, under the Consolidation Act,	39
form of do.,	39
repealed by the Conveyancing Act,	414
mode of reference under the Conveyancing Act,	414

Destination of Heirs of Entail—

may be inserted in conveyances by reference merely, . . .	33
form of such reference,	36
effect of such reference,	34

Direction, Clause of, to record part of conveyance—

may be inserted before the testing clause of any conveyance,	40
--	----

Director of Chancery—

duties of, in recording and extracting decrees of service, .	112
record of services, kept by,	115, 412
to direct sheriff-clerks as to services,	116
duties of, with reference to Crown writs,	153 <i>et seq.</i>
duties and emoluments of, may be regulated by the Commissioners of the Treasury,	412

Discharge—

notarial instrument may be expedite where it is not desired to record the whole of a discharge,	53
form of instrument,	56
how heritable security may be discharged,	258
form of discharge,	258
of casualties,	346
form of discharge,	347
of real burdens,	366
of personal obligation in heritable security, not to prejudice the real security,	393
of security over a recorded lease,	450
form of discharge,	451

“Dispone”—

under the Consolidation Act, not necessary in <i>mortis causa</i> deeds,	64
under the Conveyancing Act, not necessary in any conveyance of heritage,	363

Disposition—

formal clauses of a, in the case of land not held burgage, .	23
do., in the case of land held burgage,	28
See also <i>Conveyance</i> .	

Disposition, General.—See *General Disposition*.**Disposition and Assignment—**

superseded by assignation of unrecorded conveyance, . . .	72
---	----

Disponee, Completion of Title of—**(1) to lands—**

by recording the whole disposition,	46
by recording part of the disposition, where there is a clause of direction,	40
by expediting and recording a notarial instrument, . . .	53-6
by recording assignation, where author not infeft,	71
or by notarial instrument,	76
by petition to Sheriff, where a person having only a	

Disponee, Completion of Title of—*continued.*

Page

personal right has intervened between the person last infest and the disponee,	333
(2) to heritable security.—See <i>Heritable Security</i> .	
(3) to real burdens,	366
(4) to recorded leases,	435, 448
infestment now implies entry with superior,	306
See also <i>General Disponee</i> .	

Disponee, General.—See *General Disponee*.**Division of Common Property**—

decree to have effect of a conveyance by all the joint pro- prietors,	376
and may be recorded in the register of sasines, or used for purpose of infestment,	376

Docquet—

on assignation of unrecorded conveyance,	72, 73, 74
on notarial instrument in favour of an assignee to an un- recorded conveyance, to be recorded along with the conveyance	78
by notary or justice of the peace, signing for party who cannot write,	385

Dominium Utile and Dominium Directum.—See *Consolidation*.**Edictal**—

premonition, in heritable securities,	232
do., in securities over recorded leases,	458
notice to superior of change of ownership,	313
intimation of assignation,	466

Educational purposes—

successors in office of trustees for, do not require to make up titles to land, &c.,	88
payments in lieu of casualties in the case of lands con- veyed for,	218, 324

English Language—

used in Crown Charters,	180
-----------------------------------	-----

English Form of attesting Deeds—

now competent in Scotch Deeds,	380
--	-----

English Will—

now habile to convey Scotch heritage,	63
probate or exemplification equivalent to will, as a war- rant for a notarial instrument,	402

Engraved, Deeds partly,	277
-----------------------------------	-----

Entail—

in conveyances of entailed lands, destination and conditions of, may be inserted by reference merely,	33
form of clause of reference,	36
effect of such reference,	34
certain clauses in deed not necessary when it contains a clause authorising registration in the register of tailzies,	45
application of price of relinquished superiorities of an estate held under an,	217
excambion of lands of, affected with debts,	279
inhibitions against heir of,	289
not to bar redemption or commutation of casualties by vassal of heir of entail,	350
nor commutation of carriages and services,	353

Entry with Superior—**Under the Consolidation Act—**

subject superior might be compelled to enter vassal by confirmation,	185
mode,	185, 188
might be compelled to enter vassal by resignation,	185, 188
where superior's title was incomplete, application might be made to Lord Ordinary on Bills to ordain superior to complete his title and grant entry,	200 <i>et seq.</i>
application might be made to Lord Ordinary to authorize application for an entry by the Crown or mediate over-superior,	205
when superiority had been relinquished,	215
by precept or writ of <i>clare constat</i> ,	193
in burgage subjects,	197
every charter or writ operated a confirmation of all prior deeds,	220
provisions as to entry with Crown. See <i>Crown Charters and Writs</i> ,	145 <i>et seq.</i>
See also <i>Confirmation, and Resignation, Entry by</i> .	

Under the Conveyancing Act—

infetment to imply,	306
implied, not to alter rights in feu right,	306
do., not to validate any subfeu where subfeus effectually prohibited,	306
notwithstanding implied entry, last entered proprietor to be liable for feu duties till notice of change of ownership be given to superior,	306
form of notice,	312
provision for preserving evidence of notice of change of ownership,	307

Entry with Superior—continued.

Page

Under the Conveyancing Act—

last entered proprietor may recover feu-duties from entered vassal when no notice of change of ownership given,	307
implied, not to affect rights of superiors to casualties, feu-duties, &c.,	314
implied, not to enlarge superior's right to casualties, feu-duties, &c.,	314
implied, not pleadable in defence to action of declarator and payment of casualty,	317
error in character in which heir entered not to affect entry,	339

Entry, Term of—

short clause expressing, in the case of lands not held burgage,	21, 23
short clause expressing, in the case of lands held burgage, presumptive term of entry, where none is stated,	27, 28 364

Erasures—

must be properly authenticated in deeds,	379
recorded instruments not to be challenged on ground of erasures in record,	272
recorded deeds not challengeable on ground of erasures in record,	407

Error in Notarial Instrument, or in recording, or in Warrant of Registration—

in case of, competent to record of new,	271
---	-----

Escheat, Single—

heritable securities do not fall under,	225
---	-----

Evidence—

how taken in petitions for service of heirs,	108
competent that deed bearing to be attested by two witnesses subscribing was duly subscribed,	308

Excambion of lands affected with debt, 279

Exchequer—

signatures for Crown writs not now presented and passed in,	145
duties of Lord Ordinary in, with reference to Crown writs,	149 <i>et seq.</i>
duties of auditor of,	152
Prince may appoint his own officers of,	183

Execution of Deeds—

females may act as instrumentary witnesses,	265
of deeds and instruments partly printed or engraved or lithographed,	277

Execution of Deeds—continued.

of Crown Charters and writs,	160, 379
rules as to the solemnities required in the execution and authentication of probative deeds, relaxed by Conveyancing Act,	378
the solemnities now essential,	379
appending designation of witnesses,	380
of holograph deeds,	379
English form of attestation now sufficient in Scotch deeds, deeds attested by two witnesses subscribing not invalid on account of any informality of execution,	380
how such deeds may be set up,	380
cases illustrating the nature of the informality of execution referred to,	381
by parties who cannot write,	383
form of docquet where granter of deed cannot write,	385
by companies registered under the Companies Acts of 1862 and 1867,	410

Execution, Registration for.—See *Registration for Execution.***Executors—**

succeeding to lands under will or testamentary writing, must apply lands for the purposes of the trust or will,	70
may complete a title to lands, although there is no direct conveyance to them,	391
of creditor in heritable security entitled to succeed to such security, unless excluded,	221
how excluded,	222, 226
removal of exclusion,	223, 226
completion of title of executors-nominate to heritable securities, by writ of acknowledgment,	422
by notarial instrument,	425
completion of title of executors-dative to heritable security, by notarial instrument,	247

Exemplification of Probate—

may be used as a warrant for notarial instrument on will,	402
---	-----

Extinction of Heritable Securities and Real Burdens.—See *Heritable Securities.***Extract Decrees.**—See *Decrees.***Extracts of Deeds—**

to bear certificate of stamp duty,	500, 513
form of, recorded in the general register of sasines for preservation and execution as well as for publication,	515
form of, registered in the register of deeds and probative writs and protests in the Books of Council and Session,	529

Extracts of Deeds — <i>continued.</i>	Page
authentication of,	532
equally probative with principals except in cases of im- probation,	532
certain extracts of leases registerable in the register of sasines,	455
Factor, Judicial. —See <i>Judicial Factor.</i>	
Factor loco absentis, completion of title of,	81
Factor loco tutoris, completion of title of,	18
Fees—	
for Services of Heirs,	104
of Sheriff-Clerk of Chancery, for Crown writs,	153
of Sheriffs and Sheriff-Clerks appointed prior to 1st Octo- ber 1845, in respect of Crown writs or precepts of <i>clare constat</i> ,	175
of Crown writs,	181
of town-clerks and keepers of registers of royal burghs in office at 1st October 1845,	262
of town-clerks where no burgh register of sasines is kept,	280
of town-clerks appointed prior to 8th March 1860,	282
Court of Session empowered to pass Acts of Sederunt fixing and regulating,	294
of registration in the general register of sasines, authority to Commissioners of Treasury to prepare an amended table,	522
table of, in the Lord Clerk Register's department,	526
table of, in the Sasine and Horning Offices,	528
Females may act as instrumenting witnesses,	265
Feus—	
may now be granted by proprietors of burgage subjects,	359
legal casualties abolished, and not lawful to stipulate for any casualties but fixed sums payable at fixed periods,	356
Feu and Burgage Tenure, distinction between, abolished as regards conveyancing,	359
but distinctive registers retained,	360, 362
and certain burgage forms of conveyances may still be used,	362-363
Feu Charter—	
form of, in feuing glebe lands,	478
Feudal System, to a certain extent abolished by the Conveyancing Act,	303 <i>et seq.</i>

	Page
Feu duties—	
short form of obligation to free from casualties in feus,	22-23
short form of do. in burgage,	27
import of these clauses,	29
last vassal liable for, until notice of change of ownership given to superior,	306
implied entry not to affect rights of superiors to,	314
allocation of,	329
form of memorandum of allocation of,	331
allocation, not to affect heritable creditors not parties thereto,	330
commutation of casualties into,	345
commutation of carriages and services into,	353
feu duties from glebe lands how to be applied,	487
Firm, warrants of registration may now be signed by,	268
warrants signed by firm prior to commencement of Con- solidation Act not challengeable,	274
Forfeiture of Superiority—	
provisions of the Consolidation Act as to,	200-218
virtually repealed by the Conveyancing Act,	201
General Disponee, completion of title of—	
(1) to lands,	59, 391
form of notarial instrument,	62
(2) to heritable securities,	404, 425
forms of notarial instrument now competent,	62, 250, 406
See also <i>Addenda</i> printed immediately after <i>Preface</i> .	
(3) to real burdens,	366
(4) to recorded leases and assignations thereof in security,	439, 445
General Disposition—	
effect of a, in superseding a special destination,	61
clause of assignation of writs unnecessary in,	365
two or more, may be used as connecting links in a series of titles deduced in a notarial instrument,	365
decree of general service equivalent to a <i>mortis causa</i> , in so far as regards the expediting of notarial instruments,	366
See also <i>General Disponee</i> .	
General Name—	
several lands may be conveyed under one,	43
form of clause of reference to conveyance containing,	45
Glasgow—	
advertisement of sale under bond and disposition in security may be made in any newspaper published in,	233

Glasgow—continued.

Page

for purposes of registration, the barony and regality of, treated as a county,	503
boundaries of barony and regality of, for purposes of registration, as determined by 34 and 35 Vict. c. 68,	503

Glebe Lands—

minister, with consent of heritors and ⁷ presbytery, may grant leases for any term not exceeding eleven years,	471
and sell servitudes and rights of pasturage,	472
minister may apply to Teind Court for authority to feu or grant building leases,	472
how consent of presbytery and heritors to such application must be obtained and certified,	473, 474
particulars to be stated in such application,	474
form of petition for authority to feu,	475
form of proposed feu-charter or building lease must be produced with the petition,	474
form of feu-charter approved of by the Court,	478
intimation to be made of application,	483
any conterminous proprietor may appear and object to application being granted,	484
remit for inquiry into facts set forth in petition,	484
Court may grant authority subject to certain conditions,	485
power to grant feus not limited to feus for building purposes,	486
Court may authorise construction of streets, roads, and drains,	486
feu-duties, &c., to be taken payable to minister and his successors in office,	487, 488
conterminous proprietors entitled to right of pre-emption, decree of sale to be pronounced in favour of such proprietor,	488
heir of entail may burden lands with price of lands as purchased,	489
title of purchaser completed by recording decree of sale,	489
expenses of application by minister, &c., to be a permanent burden on the glebe,	377
casualties to be applied in extinction thereof,	491
minister, with consent of heritors and presbytery to grant all requisite charters, &c.,	491
subjects feued or leased to be subject to payment of poor- rates,	492
no fine or grassum to be stipulated for or taken,	493
minister to enjoy the same privileges as other superiors,	493

Glebe Lands Act of 1866—

short title,	470
------------------------	-----

	Page
Glebe Lands Act — <i>continued</i> .	
date of commencement,	470
interpretation of terms,	471
Court authorised to pass Acts of Sederunt,	494
does not affect existing Acts affecting the feuing of glebes, as to provisions of, see <i>Glebe Lands</i> .	495
Ground Annuals —	
assimilated to heritable securities in so far as regards the mode in which they may be transferred or discharged,	366
succession to, still heritable,	367
Ground, poinding of. —See <i>Poinding of Ground</i> .	
Heir —	
service of. See <i>Service of Heirs</i> .	
actions of constitution and adjudication against,	138 <i>et seq.</i>
personal right to lands now vests in heirs without service,	331
completion of title where deceased heir not served,	333
error in character of, not to effect entry,	339
not liable beyond value of estate,	340
may renounce,	340
liable to the extent of his intromissions,	341
title of, to land may be challenged within 20 years of date of infetment,	341
completion of title of, of last trustee,	387
such heir not entitled to administer the trust-estate,	387
bound to make over estate to trustee or judicial factor appointed by Court,	387
As to completion of title by heir, see <i>Service of Heirs</i> — <i>Clare Constat</i> — <i>Acknowledgment</i> , <i>Writ of</i> — <i>Notarial</i> <i>Instrument</i> .	
Heirship Moveables, right to, abolished,	293
Heritable Security —	
Consolidation Act applicable to every kind of,	261
definition of, under Consolidation Act,	5
extended by Conveyancing Act to Real Burdens,	366
completion of title to, when not completed at passing of Consolidation Act,	11
to be moveable estate as to succession of creditor dying after 31st December 1868,	221
not to be computed in calculating legitim,	223
to remain heritable <i>quoad fiscum</i> ,	223
to remain heritable as regards the legal rights of the hus- band or wife of the creditor,	223
may be made heritable by exclusion of executors,	221
form of minute of exclusion,	222, 226
may be made moveable by removal of exclusion,	222

Heritable Security—*continued.*

Page

form of minute of removal of exclusion,	226
liabilities of debtor not affected,	257
(1) Constitution of—	
real burdens now in the same position as heritable	
securities, <i>quoad succession</i> ,	366
form of bond and disposition in security,	227, 229
explanation of clauses of,	230
form of intimation, requisition, and protest,	236
advertisement previous to sale under,	233
grantee to count and reckon for price,	233, 239
sale to give a valid title to purchaser,	238
consignation of any surplus of price to be made,	239
on sale and consignation of surplus, lands to be dis-	
burdened,	240
where lands sold, and no surplus, how to be dis-	
encumbered,	396
(2) Transmission of—	
heritable securities may be registered during lifetime	
of grantee, or title completed after his death,	238
by assignation,	241
form of assignation,	242
when transfer of heritable security contained in a general	
deed, the whole of such deed need not be re-	
corded,	241
form of notarial instrument in such a case,	244
completion of title by notarial instrument in favour of	
general disponent or his assignee,	404
forms of instruments,	62, 250, 406
(3) Extinction of—	
renunciation or discharge of,	258
form of discharge,	258
restriction of,	259
form of deed of restriction,	260
redemption of, where discharge cannot be obtained,	398
form of notarial certificate of redemption,	399
old forms may be used in the constitution, transmission,	
and extinction of,	262
personal obligation in, to transmit against party taking	
estate by succession, gift, or (if agreed) conveyance,	393
real burdens assimilated to heritable securities, as far as	
regards the mode in which they may be transferred	
or discharged, and also as regards succession, except	
in the case of ground annuals,	366
completion of title by trustee in sequestration, or liquida-	
tors of joint stock company,	84

	Page
Heritable Security — <i>continued</i> .	
forms of notarial instrument,	86, 87
completion of title by writ of acknowledgment in favour of executors nominate, or disponent or legatee of an heritable security, or of heir where executors ex- cluded,	422
form of writ,	246
completion of title by notarial instrument in favour of executors, where the creditor has died intestate,	247
form or instrument,	249
completion of title by notarial instrument in favour of executors nominate, or of disponent or legatee,	325
form of instrument,	250
completion of title by notarial instrument in favour of heir where executors are excluded,	252
form of instrument,	249
completion of title of adjudger,	428
completion of title by notarial instrument in favour of re- presentatives (executor, disponent, assignee, legatee, or heir), of a creditor who has not taken infeftment,	253
form of instrument,	256
securities over recorded leases. See <i>Bond and Assignment in Security of Lease recorded under the Registration of Leases Act</i> .	
Heritage —	
may now be bequeathed in the same way as moveable property,	63
distinction between conquest and, as regards succession, abolished,	378
Heritors .—See <i>Glebe Lands</i> .	
Holding, manner of —	
short clause expressing, in the case of lands not held burgage,	21, 23
import of such clause,	25
need not now be expressed, unless intended to be <i>de me</i> ,	24
an alternative or <i>a me vel de me</i> holding now impossible,	26
manner of holding implied in the case of lands not held burgage, where none is expressed,	25
do., in the case of lands held burgage,	27
Holograph Testamentary Writing —	
does not require to be attested by witnesses,	379
now presumed to be of the date it bears,	383
Hornings and Expired Charges —	
particular registers of, not affected by the Land Registers Act of 1868,	519
See also <i>Inhibition</i> .	

Implied Entry with Superior,	Page 306
See also <i>Entry with Superior</i> .	
Implied Term of Entry, where none stated in Conveyance,	364
Improbative Deeds may be set up by proof, if they bear to be attested by two witnesses subscribing,	380
Indentures of Apprenticeship— extract from register of probative writs equivalent to principal,	499
Indexes of Minute Books of Register of Sasines— to be prepared under the superintendence of the Keeper of General Register of Sasines, printed copies to be furnished to the Sheriff-clerk of each county,	509 510-511
Infetment— definition of, in the Consolidation Act, now implies entry with superior, date of, of heir, presumed to be the date of entry into possession, implied, of successors in office of <i>ex officio</i> trustees, preference of land rights dependent on priority of, 270, 276, 450 See also <i>Infetment Act of 1845—Registration in Register of Sasines—Sasine</i> .	17 306 342 390 270, 276, 450
Infetment, Warrant of, not now necessary or competent in decrees,	21, 23
Infetment Act of 1845 (Schedule (A) No. 2 of the Consolidation Act of 1868)— reason for including it in Schedule (A) of the Consolidation Act, how sasine may be given, recording of instruments of sasine, date of infetment, competent to make and record a new instrument of sasine, form of precept of sasine, instruments of resignation <i>in favorem</i> abolished, interpretation clause, provisions expressly or impliedly repealed,	10 14 15 15 15 15, 18 17 17 16, 17
Informality of execution not to invalidate deed bearing to be attested by two witnesses subscribing,	380

Inhibition—

particular registers of, abolished,	518
publication, except by registration in general register, abolished,	285, 519
warrant of, may be inserted in the will of a summons,	285
execution of such warrant,	286
to take effect only from date of registration of notice,	285
form of notice,	286
letters of, may be in short form,	286
Act of Sederunt regulating the mode of obtaining letters of,	287
what bill for letters of, should set forth,	288
form of letters of,	288
on what letters of, may be used,	289
not to affect acquirenda unless under entail or other inde- feasible title,	289
warrant of, on depending summons, may be recalled by petition to Lord Ordinary in the cause,	290
in time of vacation petition to be to the Lord Ordinary on the Bills,	291
procedure where case has gone to the Inner House,	291
notice of signed summons of reduction in register of, to render lands litigious,	291
form of notice,	292
now prescribes in five years,	386
but may be registered of new,	386
or memorandum of, may be recorded before five years expire,	386
so recorded to be good for other five years,	386
form of memorandum renewing,	387
period of subsisting inhibitions not extended by the above provisions,	387
general register of and register of adjudications to be treated as one register,	519
establishment of general register of sasines and,	520

Instrument of Sasine.—See *Sasine*.

Instrument of Resignation ad remanentiam.—See
Resignation ad remanentiam.

**Instrument of Resignation in favorem abolished by
the Infertment Act of 1845,** 17

Instrument, Notarial.—See *Notarial Instrument*.

Insurance—

by heritable creditor, 231, 239

	Page
Interdictions—	
particular registers of, abolished,	519
no publication required beyond registration in general register of inhibitions,	518
Interruptions of Prescription—	
register of, now the general register of sasines,	517-8
Intimation of Assignment—	
under the Transmission of Moveable Property Act of 1862,	465
old forms may be used,	467
Intimation, Requisition, and Protest—	
short form of,	236
in the case of a security over a recorded lease,	459
Investiture, renewal of, abolished,	303
Investiture, Writ of (now apparently incompetent),	214
Irritancy ob non solutum canonem—	
not affected by the Conveyancing Act,	314
Judicial Factor—	
completion of title to lands by, under the Consolidation Act,	79
do., under the Conveyancing Act, where a trust title is already recorded,	389
appointment of, pending trial of question as to right of succession,	343
Jus Coronae—	
not affected by the Conveyancing Act,	413
Jus mariti—	
excluded from heritable securities belonging to wife, .	223
Jus relictæ—	
excluded from heritable securities belonging to husband,	223
Justice of Peace—	
may take evidence in petitions for service of heirs, .	108
may now act as a notary public in signing for party un- able to write,	383
Keepers of Registers—	
fees of certain, during their respective rights of office, .	262
official acts of, not to be affected by their personal interest in recorded writs,	283
Court of Session empowered to pass Acts of Sederunt fix- ing and regulating the fees of, in the case of the burgh registers of sasines,	294
compensation to those whose offices were discontinued by the Land Registers Act of 1868,	521
responsibilities of,	522

	Page
Land Registers Act of 1868—	
short title,	501
date of commencement,	523
interpretation of terms,	501
does not apply to burgh registers,	523
Lands—	
definition of, in Consolidation Act,	8
do., in Conveyancing Act,	301
description of. See <i>Description</i> .	
Latin Language—	
now disused in charters from Crown, as well as in those from subject superiors,	180
Law Agent. —See <i>Agent</i> .	
Lease—	
of land held for religious or educational purposes, to vest in successors in office of trustees,	88
of glebe lands.—See <i>Glebe Lands</i> .	
Leases recorded under the Registration of Leases Act of 1857—	
sub-leases are included by the Act,	432
what leases and assignments thereof may be recorded in the register of sasines,	432, 454
what extracts are registerable,	456, 461
effectual against singular successors,	431
assignment,	435
form of assignment,	436
assignments in security may be granted,	436
form of bond and assignment in security,	437
where party registering lease or resignation in security of, is not the original lessee or grantee, notarial instru- ment may be expedite,	439
form of instrument in case of lease,	439
do., do. of assignment in security,	441
assignments in security transferable by translation	441
form of translations,	442
completion of title of heir to lease or assignment in secu- rity by writ of acknowledgment,	443
forms of writs,	444, 445
completion of title of heir or disponee by notarial in- strument,	445
forms of instruments,	446, 448
completion of title of executors.—See <i>Addenda</i> printed after the Preface.	
completion of title of adjudger of,	449

Leases under Registration of Leases Act—continued.

trustee on sequestrated estate of party in right of lease	
may complete title by a notarial instrument,	449
preferences regulated by date of recording,	450
renunciation and discharge to be recorded,	450
form of renunciation,	451
form of discharge,	451
reductions of, to be registered,	452
mode of registration,	452
registration equivalent to possession,	453
import of clauses in schedules of Act,	456

Legacy of Heritage, 63 *et seq.*, 391**Legatee of Heritable Security—**

completion of title of, by writ of acknowledgment,	422
by notarial instrument	254, 425

Legatee of Lands, completion of title of.—See *Dis-
pensee and General Dispensee.***Legitim not claimable from heritable securities,** 223**Letters of general or special charge abolished,** 139**Letters of Inhibition.**—See *Inhibition.***Liability of Heirs.**—See *Heir.***Liferenter—**

in superiority, generally cannot grant charters or writs to	
vassals,	305
casualties payable by,	316, 325

Limitations.—See *Conditions.***Liquidator of Joint-Stock Company—**

may complete title to lands or heritable securities by no-	
tarial instrument,	84
form of instrument,	86

Lithographed, Deeds partly, 277**Litigiosity—**

now created only from date of registration of notice of	
summons,	292

Long Lease.—See *Leases recorded under the Leases Registration
Act of 1857.***Lord Clerk Register—**

to superintend Record of Services,	112, 115, 152
duties of, under Land Registers Act of 1868,	508-13, 520, 522, 523
duties of, in regard to the Registers of Deeds, &c.,	500, 534
salary of,	523
table of fees in Department of,	526

	Page
Lord Ordinary—	
duties of, in Exchequer, with reference to Crown writs, 149 <i>et seq.</i>	
former duties of, with reference to forfeiture of superiority, 200-218	
inhibitions on summons depending before, may be recalled	
by petition to,	291
judgment of, pronounced in virtue of Consolidation Act,	
may be reviewed,	293
if not brought under review to be final,	293
judgment of, in petitions relating to forfeiture or relinquishment of superiority final unless brought under review,	293
Lunatic—	
<i>curator bonis</i> should make up title in person of,	82
Mails and Duties—	
effect of decree of, in competition with trustee in bankruptcy,	408
Majesty, Her—	
private estates of,	413
Mandate to sign Petition of Service,	93
Manner of Holding—	
short clauses expressing, under Consolidation Act,	21, 23
import of such clauses of,	25
alternative holding now impossible,	26, 310
Marginal Additions must be authenticated,	379
how authenticated in Extracts,	532, 535
Marriage-Contract—	
clause of direction to record part of,	40
notarial instrument on conveyance in,	54
inhibition affecting <i>acquirenda</i> under,	290
Memorandum—	
of allocation of feu-duty,	331
constituting a feu-duty, or additional feu-duty, in place of casualties or services commuted,	349
recording an inhibition of new,	387
to be entered in each division of the general register of sasines, where a writ is directed to be recorded in the registers of several counties,	502, 503, 506
where writ registered, for preservation only, in the general register of sasines is afterwards registered for preservation and execution,	533
Mid-superiority—	
provisions of the Consolidation Act as to forfeiture or relinquishment of,	200, 218

Mid-superiority — <i>continued.</i>	Page
these provisions virtually repealed by the Conveyancing Act,	201
defeasible, under an alternative holding, swept away by the Conveyancing Act,	308
Mines and Minerals —	
Crown Charter of,	145
proceeds of, estimated in fixing composition,	346
Minister of Established Church —	
may act as notary in executing testament of person in his parish,	384
powers of, with regard to Glebe Lands.—See <i>Glebe Lands.</i>	
Minor —	
no deduction now made on account of years of minority where prescriptive possession has continued for 30 years,	373
<i>curator bonis</i> should make up title in person of,	82
cannot convey heritage <i>mortis causa</i> ,	65
Minute —	
of relinquishment of superiority (now incompetent),	212
of acceptance of relinquishment (now incompetent),	212
excluding executors in an heritable security,	226
of removal of such exclusion,	226
for effecting consolidation,	328
presented in Bill Chamber or in Sheriff-Court, for warrant to charge an heir or disponee under a personal obligation by his ancestor or author,	395
lodged in process for a conterminous proprietor, under the Glebe Lands Act,	490
Minute-Book —	
of Register of Deeds,	497
of General Register of Sasines,	502, 506, 510
of Register of Inhibitions and Adjudications,	519
Monopolies of Superior's Agents annulled,	354
Mortmain,	224
Mortis causa Settlement of Heritage —	
<i>de presenti</i> words of style now unnecessary in,	63
"dispone" not now essential,	64
essential in deeds where granter died prior to 31st December 1868,	66
takes effect from granter's death,	65
what words in a, will carry heritage,	67
a minor cannot grant a,	65

	Page
Moveable Property—	
to what extent heritable securities are now moveable,	221
and real burdens,	366
right of heir to heirship moveables abolished,	293
transmission of.—See <i>Transmission of Moveable Property Act</i> .	
Name of Lands—	
general, provisions for adoption and use of,	43 <i>et seq.</i>
some short distinctive name should be used in referring to full description contained in a recorded conveyance or instrument,	417
Negative Prescription—	
not affected by the Conveyancing Act,	375
Non-entry—	
no lands now deemed in,	317
action in lieu of declarator of,	317
implied entry not to defeat superior's right to raise such action,	317
decree therein to operate and have the effect of a decree of declarator of,	317
form of summons in such action,	322
at what time such action may be raised,	316, 319
superior's title must be complete,	319
what casualties may be thus sued for,	320
effect of decree,	321
Notarial Certificate—	
of intimation, requisition, and protest,	236
where lands are sold under heritable security and no sur- plus emerges,	397
where lands have been redeemed of heritable security, but discharge cannot be obtained,	399
of intimation of assignation,	466
Notarial Execution of Deeds—	
one notary or justice of the peace and two witnesses now sufficient to execute any deed where party cannot write,	383
same notary should not act for parties with antagonistic interests,	384
form of docquet,	385
docquet must be holograph,	385
form of testing clause,	385
Notarial Instrument—	
stamp-duty payable on,	56
form of testing clause of,	56
may be expedite notwithstanding clause of direction,	41

Notarial Instrument—*continued.*

Page

may be recorded at any time during the life of the party	
on whose behalf expedite,	270
must have warrant of registration,	267, 372
in case of error or defect, competent of new to make and	
record,	271-272
not challengeable on the ground of erasures in record,	272
mode of referring to a recorded,	99
obligations appointed to be inserted in instruments of	
sasine, must be inserted in,	274
where used to transmit a real burden, not necessary to set	
forth the deed constituting the real burden,	367
a decree of general service now a sufficient link in a series	
of titles set forth in a,	369
two or more general dispositions may now be used as	
connecting links in a series of titles set forth in a,	365

Notarial Instrument, Forms of—

(1) Under the Consolidation Act—

Schedule (J.)—Notarial instrument in favour of dis-	
ponee or his assignee, &c.,	56
Schedule (L.)—Notarial instrument in favour of a	
general donee or his assignee, &c.,	62
See also <i>Addenda</i> , printed immediately after the <i>Preface</i> .	
Schedule (N.)—Notarial instrument in favour of an	
assignee to an unrecorded conveyance to be re-	
corded along with the conveyance,	78
Schedule (O.)—Notarial instrument in favour of a	
trustee in a sequestration or of liquidators of	
joint-stock companies,	86
Schedule (HH.) Form of instrument in favour of an	
assignee to an heritable security following on a	
deed granted for further purposes or objects,	244
See also <i>Addenda</i> , printed immediately after the <i>Preface</i> .	
Schedule (JJ.)—Form of instrument in favour of an	
executor or heir of a creditor who died intestate	
in right of an heritable security,	249
Schedule (KK.)—Form of instrument in favour of the	
executors or executor nominate, or of the dis-	
ponee or legatee of a creditor in right of an herit-	
able security,	250
See also <i>Addenda</i> , printed immediately after the <i>Preface</i> .	
Schedule (LL.)—Form of instrument in favour of a	
trustee on a sequestrated estate, or of liquidators	
of a joint-stock company in right of an heritable	
security,	87
Schedule (MM.)—Form of instrument on an unre-	

Notarial Instrument, Forms of—*continued.*

corded bond and disposition in security, or un-	
recorded assignation in favour of the executor or	
disponsee, or assignee, or legatee, or heir of the	
creditor,	256
(2) Under the Conveyancing Act—	
Schedule (N.)—Form of instrument in favour of a	
general disponsee or his assignee in right of an	
heritable security,	406
See also <i>Addenda</i> , printed immediately after the <i>Preface</i> .	
(3) Under the Registration of Leases Act—	
Schedule (C.)—Forms of notarial instruments in	
favour of a party not the original grantee—	
No. 1—Case of lease,	439
No. 2—Case of assignation in security,	441
Schedule (F.)—Form of notarial instrument in favour	
of heir in recorded lease or assignation in security,	
or of trustee on sequestrated estate—	
No. 1—Case of Lease,	446
No. 2—Case of assignation in security,	448
See also <i>Addenda</i> , printed immediately after the <i>Preface</i> .	

Notarial Protest—

may be assigned in short form authorised by the Trans-	
mission of Moveable Property Act of 1862,	468
form of warrant of execution inserted in extract of,	529

Notary Public—

may take evidence in petitions of service of heirs,	108
certificates by,	237, 397, 399, 466
See also <i>Notarial Execution</i> and <i>Notarial Instruments</i> .	

Notice—

of inhibition, to be registered,	284 <i>et seq.</i>
of litigiousity, to be registered,	291, 292
of change of ownership, to superior,	307, 312

Novodamus—

charter or writ of, how obtained from the Crown,	178
still competent under the Conveyancing Act, whether from	
Crown or subject superior,	303
when usually granted,	305
commutation of casualties may be effected by,	347
allocation of feu-duties may be effected by,	330

Obligation to free and relieve disponsee of feu-duties, casualties and public burdens—

short clause of, in conveyance of land not held burgage,	22, 23
import of such clause,	30

Obligation to free and relieve disponee of ground-annual, public burdens, &c.—

short clause of, in conveyance of land held burgage,	27, 29
import of such clause,	30

Obligation to Infest—

clause of, not now necessary in any conveyance,	21, 27
---	--------

Obligation, Personal.—See *Personal Obligation*.**Official Searchers in the General Register of Sasines,** 529**Official Trustees—**

successors in office of, do not require to make up titles to land, 390
--

Over-Superior—

provisions of the Consolidation Act with reference to entry by, in case of forfeited or relinquished mid-superiorities,	200–218
these provisions virtually repealed by the Conveyancing Act,	201
consolidation not to extend rights of,	329

Pages, number of, need not now be specified in testing clause of deed, 378**Paisley, tenure of Booking in.—See *Booking Tenure*.****Particular Registers of Sasines—**

abolished by the Land Registers Act of 1868,	508
dates of abolition of,	509

Particular Registers of Inhibitions abolished, 518**Partnership.—See *Firm*.****Pasturage—**

right of, may be sold by minister,	472
how money to be applied,	472

Personal Bond or Conveyance of Moveable Estate—

may be assigned in short form,	463
registering assignation,	463
assignation may be written on,	436
mode of intimating assignation of,	454
old forms may be used,	676

Personal Diligence on Deeds registered for execution, 531**Personal Obligation—**

assignation of—See <i>Personal Bond, supra</i> .	
in heritable security, to transmit against party taking estate by succession, gift, or (where agreed) by conveyance,	392

	Page
Personal Right to Land under the Conveyancing Act—	
former state of the law,	332
now vests, by heir's survivance, without service or other procedure,	331
transmissible as if heir held under an unfeudalised con- veyance,	332
but not to the effect of enabling him to complete a title in the same way,	333
powers of heir and his creditors under this provision, .	333
still desirable that heir should complete his title, .	333
title to be completed by petition similar to petition for special service,	333
form of petition,	336
how petition to be proceeded with,	334
any one acquiring right from heir may complete his title in the same way,	333
effect of decree in petition,	334
if there is no mid-impediment, heir may still pass over intervening heirs and serve himself heir of person last infeft,	335
Petition—	
by judicial factor,	79
under the Trusts Act of 1867,	80, 83
of general service,	95
of special service,	96
error in setting forth character of heir in,	339
for forfeiture of superiority (now incompetent),	202, 207
to apply price of forfeited or relinquished superiority, .	217
for recall or restriction of inhibition,	209
for completing a title to lands where a proprietor with only a personal right has intervened between the person last infeft and the petitioner,	336
to set up a deed which, though bearing to be attested by two witnesses subscribing, is improbativ through some informality of execution,	380
for authority to feu glebe lands,	475
Poining of the Ground—	
to what heritable creditors the action of, is competent, .	235
by superior, for feu-duties,	312
for compositions stipulated for at uncertain intervals, .	315-6
effect of executing summons of, in competition with trustee in bankruptcy,	409
Poor Rates payable on glebe lands feued out, .	493
Possession—	
prescriptive,	373

Possession—continued.

Page

right of heir who has entered into, not challengeable after 20 years,	341
persons interested may prevent such entry,	343
power of Court to regulate <i>interim</i> ,	343
in leases,	434
recording of long leases equivalent to,	453
heritable creditor entering into.—See <i>Maills and Duties</i> .	

Precept from Chancery—

form of, under Infektment Act of 1845,	16
almost superseded by Crown writ of <i>clare constat</i> , . .	20
See also <i>Clare Constat</i> .	

Precept of Clare Constat.—See *Clare Constat*.

Precept of Sasine—

short form of, under Infektment Act of 1845,	15, 20
not now necessary in conveyances,	21
but instrument of sasine cannot be expedite on a convey- ance without a precept,	21

Pre-emption, Right of—

competent to conterminous proprietor where glebe autho- rized to be feued or let on building lease,	488
--	-----

Preference of Land Rights—

dependent on priority of recording in register of sasines, .	270
also in questions in bankruptcy,	276
and in recorded leases, &c.,	450

Presbytery.—See *Glebe Lands and Religious Purposes*.

Prescription—

any <i>ex facie</i> valid irredeemable title sufficient foundation for,	373
possession on such title for 20 years now equivalent to former prescriptive possession of 40 years,	373
if possession for 30 years, no deduction to be made on ground of minority,	373
new period of, not to affect servitudes,	373
commencement of provision,	373
possession prior to January 1879 not to count unless con- tinuous,	374
negative, remains the same,	375
period within which the right of a person to lands by suc- cession as heir may be challenged,	341
of inhibition reduced to five years, unless registered anew, .	386
register of interruptions of, now the General Register of Sasines,	317-8

	Page
Presenter of Signatures—	
office of, abolished by Conveyancing Act, . . .	411
duties of, previous to that Act, . . .	146 <i>et seq.</i>
compensation may be awarded to, . . .	411
Sheriff of Chancery to perform duties of, . . .	411
appointment of clerk to, . . .	133
office of clerk abolished, . . .	411
Sheriff-Clerk of Chancery to perform duties, . . .	411
Presentment Book in Register of Sasines, . . .	502-3, 507-8
Preservation, Registration for. —See <i>Registration for Preservation.</i>	
Prince and Steward of Scotland—	
included under “Crown” in the Consolidation Act, . . .	6
included under “Superior,” in the Conveyancing Act, 302, . . .	412-13
entitled to appoint his own officials in Chancery office, . . .	183
Printed—	
deeds may be partly written and partly printed, engraved, or lithographed . . .	277
testing clause in such deeds . . .	277
Probate—	
may be used as a warrant for a notarial instrument on a will, . . .	402
Probative Deeds—	
rules as to, altered by the Conveyancing Act, . . .	378
these alterations not retrospective, . . .	379
present essentials of . . .	379
deeds bearing to be attested by two witnesses subscribing may be set up on proof notwithstanding any informality of execution, . . .	380
cases illustrating the nature of the informality referred to, . . .	381
Probative Writs, Register of—	
writs recorded in, not now returned, . . .	498
Procuratory or Clause of Registration—	
short form of, in conveyances of land not held burgage, . . .	22, 23
do., in conveyances of land held burgage, . . .	27, 29
import of such clause, . . .	30, 264
Procuratory or Clause of Resignation—	
short form of, authorised by the Consolidation Act, in the case of lands not held burgage, . . .	21, 23
import of, . . .	29
rendered useless by the Conveyancing Act, . . .	31
to be held <i>pro non scripto</i> in the case of lands held burgage, . . .	363

	Page
Progress, Charters and Writs by—	
abolished since 1st October 1874,	303
exceptions,	303
Progressive Stamps abolished,	24
Prohibition of Subinfeudation—	
not effectual in feus granted after 1st October 1874,	355
an alternative holding not a contravention of,	26
Prohibitory, Irritant, and Resolutive Clauses. —See <i>Entail.</i>	
Property, Consolidation of, with Superiority. —See <i>Consolidation.</i>	
Propriis manibus, Investiture,	47
Protest, Notarial—	
may be assigned in short form authorized by Transmission of Moveable Property Act of 1862,	468
form of warrant of execution inserted in extract of,	529
Provisions. —See <i>Conditions.</i>	
Provost—	
may take evidence in petitions for service of heirs,	108
to sign writs of <i>clare constat</i> to heirs in burgage subjects,	197
Public Burdens—	
short form of clause of obligation to free from, under Con- solidation Act,	22, 23, 27, 29
import of such clauses,	30
precentor's salary not a,	33
apportionment of, between purchaser and seller,	33
Publication, Registration for. —See <i>Registration in Register of Sasines.</i>	
Publication of Services,	101
See also <i>Addenda</i> printed immediately after <i>Preface.</i>	
Publication of Inhibitions,	285, 518
Pupil—	
factor <i>loco tutoris</i> should make up title in person of,	82
Real Burdens—	
former state of the law in regard to transfer of,	367
now assimilated by the Conveyancing Act to other herit- able securities in so far as regards the mode in which they may be transferred or discharged,	366
conveyances and discharges of, may be recorded,	366
date of recording the criterion of preference, and intimation unnecessary,	366

	Page
Real Burdens — <i>continued</i> .	
moveable as to succession,	366
except ground annuities,	367
notarial instruments applicable to the transfer or extinction of,	367
may be imported into a deed or instrument by reference merely,	36, 370
form of reference to, under the Consolidation Act,	38
do. under the Conveyancing Act,	372
See also <i>Conditions</i> .	
Recall or Restriction —	
of inhibition,	290
of arrestment,	291
Reclaiming Note against judgment pronounced by the Lord Ordinary under the Consolidation Act,	294
Record of Services ,	112, 113
Recording .—See <i>Registration in the Register of Sasines</i> .	
Reddendo —	
may be referred to in charters and writs by subject superiors,	191
Redemption —	
clause reserving right of, in bond and disposition in security,	231
clause reserving right of, in security over a recorded lease,	458
provisions for disencumbering lands of heritable security where the debtor cannot obtain a discharge,	398
Reduction —	
of decree of service,	121, 137
notice of summons of, must be registered in order to create litigiousity,	291, 519
of recorded lease, &c.,	452
Reduction, Improbation, and Declarator of Non-Entry, now incompetent ,	318
reduction and declarator may now be raised,	311
Reference —	
insertion of destination and conditions of entail, by,	33
do., of real burdens, conditions, &c., by,	36, 370
do., of <i>tenendas</i> and <i>reddendo</i> ,	191
description of lands by, under the Consolidation Act, now repealed,	39
description of lands by, under the Conveyancing Act,	414
description of lands by reference to conveyance containing general designation,	43, 45

Reference—continued.

Page

mode of referring to notarial instruments, as recorded,	99
may be made in notarial instruments to real burdens and conditions, &c., appointed to be inserted in instruments of sasine,	274

Register of Adjudications—

now combined with Register of Inhibitions,	519
See also <i>Adjudication and Litigiosity.</i>	

Register, Lord Clerk.—See Lord Clerk Register.

Register of Crown Writs,	176
---	-----

Registers of Deeds.—See Registration for Preservation and Execution.

Register of Inhibitions—

particular registers abolished,	518
registration in general, the only publication now requisite,	285, 518
now combined with Register of Adjudications,	519
particular registers of hornings retained, but not competent for inhibitions,	519
See also <i>Inhibition.</i>	

Register of Interruptions of Prescription—

discontinued as a separate record,	517
General Register of Sasines substituted therefor,	518

Register of Sasines.—See Registration in the Register of Sasines.

Register of Tailzies—

effect of express clause authorizing registration in,	45
---	----

Registered Writs, Execution Act of 1877,	529
---	-----

Registration of Writs Act of 1868—	496
---	-----

Registration for Preservation and Execution—

short form of clause consenting to registration, in conveyances of land not held burgage,	22, 23
do., in conveyances of land held burgage,	27, 29
import of such clause,	30, 264
import of such a clause under the Registration of Leases Act of 1857,	456, 458
effect of clause in assignations of personal bonds,	464, 465
writs given in to be registered in the Books of Council and Session not now given out,	497
no writs registered as probative writs are now given back,	498
indentures of apprenticeship,	499
extracts to bear certificate of stamp-duty,	500

Registration for Preservation—continued.

registration in General Register of Sasines for preservation, or for preservation and execution, as well as publica- tion,	512
form of warrant of registration to be used in such a case,	514
writs so registered for preservation only may thereafter be registered for preservation and execution,	533
form of extract of deed containing warrant of execution,	515
fees chargeable for such registration,	516-7
form of warrant of execution inserted in extracts of deeds registered in the Books of Council and Session,	529, 530
do., in Sheriff Court Books,	530
execution competent on such warrant,	531
warrants of execution prior to 1st October 1877 unchal- lengeable on certain grounds,	531
authentication of extracts of deeds registered in the Books of Council and Session,	532, 534

Registration in the Register of Sasines—

recording conveyances, &c., authorized at any time during the life of the party,	270
recording of long leases, &c., authorized.—See <i>Leases</i> , &c.	432
clause directing part of conveyance to be recorded,	40, 42
form of warrant of registration required in such case,	40, 42
effect of such recording,	40
recording of conveyance now equivalent to recording in- strument of sasine,	46
warrant of registration required in every case,	267, 372
forms of warrants of registration,	42, 49
recording of new in case of error or defect,	271
recording not affected by personal interest of keeper of register in conveyance recorded,	271
erasures in record of deed or instrument now immaterial, unless made for the purpose of fraud, or the record is not conformable to the deed or instrument,	407
burgh registers still retained for all writs affecting land which was held burgage immediately prior to 1st October 1874,	360, 362
in general register writs of each county kept separate,	502
provision for case of writ containing lands in more than one county,	502, 503
stewartry of Kirkcudbright treated as a county,	503
barony and regality of Glasgow treated as a county,	503
boundaries thereof for purposes of registration,	503-4
competent to record writs in other county or counties to which they refer, by new warrant,	506

Registration in Register of Sasines—continued.

provision for writs transmitted by post to General Register of Sasines,	507
how registration to be made,	507
particular registers of sasines abolished,	508
respective dates of abolition,	509
printed abridgments and indexes of minute-books,	509, 512
registration for preservation, or for preservation and execution as well as publication,	512
form of warrant of registration to be used in such case,	514
writs so registered for preservation only may thereafter be registered for preservation and execution,	533
form of extract of deed containing warrant of execution,	515
fees chargeable for such registration,	516-7
certificates of registration,	517
registration in the General Register of Sasines now equivalent to registration in the Register of Interruptions of Prescription,	517-8
provision as to official searchers,	520
regulation of the establishment of the General Register of Sasines,	520, 522
responsibilities of keeper of General Register,	522
power to Commissioners of Treasury to prepare amended table of fees,	522
Treasury Minute as to searches,	524
districts for which search sheets have been prepared,	525
explanation of "search sheet" system,	526
table of fees in the Lord Clerk Register's department,	526
amended table of fees in the Sasine and Horning Office,	528

Registration of Leases Act of 1857—

short title,	460
date of commencement of,	432
main object of,	432
Amendment Act of 1877,	461
as to the provisions of the Act. See <i>Leases recorded, &c.</i>	

Registration, Warrant of—See *Warrant of Registration.***Relief, Casualty of—**

abolished in feus created since 1st October 1874,	356
See also <i>Casualties of Superiority.</i>	

Relief, Right of—

assignment of, or other right affecting land not passing under assignment of writs, may be granted in a short form,	400
form of assignment,	401

Religious or educational purposes—

successors in office of trustees for, do not require to make up titles to land, &c.,	88
payments in lieu of casualties in the case of lands conveyed for,	218, 324

Relinquishment of Superiority—

provisions of the Consolidation Act as to	200–218
virtually repealed by the Conveyancing Act,	201, 205, 215

Remedies of creditors not affected by change of law as to succession to heritable securities,

257

Remedies of Superiors for recovery of feu duties, &c.,

307

Removal of exclusion of Executors from an heritable security,

222, 226

Renewal of investiture abolished,

303

Rents—

short clause of assignation of, in conveyances of land not held burgage,	22, 23
do. in conveyances of lands held burgage,	27, 29
import of such clauses,	30
effect of Apportionment Act of 1870,	32
import of assignation of, in bond and disposition in security,	231

Renunciation—

by heir, of ancestor's estate,	340
of recorded lease,	451

Repeals effected by the Consolidation Act of 1868—

repealing clause,	9
list of statutes repealed,	12
repealed statutes still in force so far as regards any reference to them in any statute not repealed,	296
competency in certain cases of forms of conveyance under repealed statutes,	11
competency of forms of conveyance in use prior to the Repealed Acts,	295

Repeals effected by the Conveyancing Act of 1784—

sections of the Consolidation Act of 1868 expressly repealed,	418–428
general repealing clause,	430

Representation—

general, not inferred by special service,	128
limited by specification in the case of general service,	131
not inferred by having obtained forfeiture or relinquishment of superiority,	213
heir not now liable for ancestor's debts beyond the value of the estate to which he succeeds,	340–1

Reservations affecting lands.—See *Conditions*.

Resignation, Entry by—

abolished by the Conveyancing Act,	303
former provisions as to, with the Crown,	163
form of Crown writ of resignation,	166
form of Crown charter of do.,	167
former provisions as to, with subject superior,	188
forms of charters and writs of resignation by subject superiors (now incompetent),	190
writ of resignation proceeding on a decree of forfeiture or relinquishment (now incompetent),	200, 204, 206, 210
authentication of writs,	219

Resignation ad remanentiam —

under the Infektment Act of 1845,	17
now apparently incompetent,	20, 58, 328
instrument of resignation rendered unnecessary by the Consolidation Act, which allowed conveyance in favour of superior to be recorded instead,	57
form of instrument provided by that Act,	58

Resignation in favorem—

instruments of, abolished by the Infektment Act of 1845,	17
--	----

Resignation, Procuratory or Clause of.—See *Procuratory of Resignation*.

Resignation and Sasine, Instrument of, now incompetent,

52

Restriction—

how heritable security may be restricted,	259
form of deed of,	260

Retrocession—

under the Transmission of Moveable Property Act of 1862,	468
--	-----

Review of Judgments under the Consolidation Act,

293

Rules of Court—

authority to make, conferred by Consolidation Act,	295
of 27th January 1869, fixing fees to be paid on Crown Writs,	181

Sale—

under bond and disposition in security,	232, 238, 239
under securities over recorded leases,	458
decree of, judicial,	421
effect of decree of, of glebe lands,	377
charter of, now incompetent,	304

	Page
Salmon fishings—	
prescriptive possession of,	376
Sasine—	
how it may be given, under the Infefment Act of 1845, .	14
recording instruments of sasine,	15
warrant of registration now necessary,	21
date of infefment,	15
in case of error, another instrument may be recorded, .	15
short form of precept of sasine,	15, 18
precept necessary for instrument,	21
short form of instrument of sasine,	15, 18
burgage sasines,	16, 51
form provided by the Consolidation Act for instruments of sasine in burgage subjects, now incompetent, .	53
instrument of sasine no longer necessary, but conveyance may be recorded instead,	46
instrument of sasine now almost obsolete,	20-21
See also <i>Infefment</i> , and <i>Registration in the Register of Sasines</i> .	
Sealing of Crown Charters,	160
Searches in Register of Sasines—	
official searchers,	520
Treasury minute as to searches,	524
“search-sheet” system explained,	526
Security, Heritable.— See <i>Heritable Security</i> .	
Securities over Recorded Leases—	
form of bond and assignation in security,	437
completion of title to, by notarial instrument,	439, 441, 445, 448
translation of,	441, 442
completion of title to, by writ of acknowledgment,	443, 445
completion of title of adjudgers,	449
do., of trustees on sequestrated estates,	449
preferences, how regulated,	450
discharge of,	450, 451
reductions of,	453
import of clauses,	456
See also <i>Addenda</i> , printed immediately after <i>Preface</i> .	
Sederunt, Acts of.— See <i>Acts of Sederunt</i> .	
Sequestration in Bankruptcy.— See <i>Trustee in Sequestration</i> .	
Sequestration of Estate pending Trial,	343
Services exigible by Superior.— See <i>Carriages and Services</i> .	
Services of Heirs—	
brievs from Chancery abolished,	90
to proceed by petition to Sheriff,	90

Services of Heirs—continued.

	Page
petition to be presented to Sheriff of county or of Chancery,	91
nature and form of petition,	95
form of petition for general,	95
form of petition for special,	96
place of death of ancestor should be stated. See <i>Addenda</i> , printed immediately after <i>Preface</i> .	
not to proceed till publication,	100
Acts of Sederunt to regulate publications,	101
fees of Sheriff-clerks therein,	104
abstract of petition of service,	101
caveats to be received,	106
petition of service equivalent to brieve and claim,	107
procedure before Sheriff in petitions,	107
<i>induciae</i> of petitions,	107
evidence, how to be taken,	108
effect of decree of service,	107
where domicile of deceased unknown, and where petition for general service presented ten years after his death,	
not necessary to prove county of domicile,	110
competing petition may be presented,	111
not necessary to hold Court for the disposal of any unop- posed petition,	411
judgment of Sheriff,	111
petition and proceedings to be transmitted to Chancery,	14
recording and extract of decree	112
duty of director of Chancery,	112
transmission of extract of decree of,	112
proceedings to lie open at Sheriff-clerk's office,	113
separate extract decrees under one petition,	113
extract decree equivalent to extract retour,	114
record of services, how to be kept,	114
record to lie open,	115
extracts and certified copies to be given,	115
title to oppose service,	117
appeal may be taken for jury trial, or proof before judge of Court of Session,	118
Sheriff's judgment may be reviewed,	119
procedure when a decree of service is brought under re- duction,	121
effect of decree of reduction,	122
forms and effect of procedure in Court of Session,	123
Court of Session Act of 1868 to apply to appeals and re- ductions,	123
decree of special service has effect of a disposition from deceased to the heirs and his assignees,	124

Services of Heirs—continued.

Page

effect of extract decree of special service and warrant of registration being recorded,	126
special service not to infer general service or general representation,	128
petitioner for special service may petition for general service,	129
general service may be limited by specification,	130, 131
this provision superseded by the provisions of the Conveyancing Act,	131
procedure in petitions depending at passing of Consolidation Act,	136
agents entitled to practice in petitions,	134
crown writs or precepts to heirs, how obtained after service, 168, 174 under Conveyancing Act	
error in character of heir no objection to decree of general or special	339
<i>cum beneficio inventarii</i> unnecessary,	341
decree of general, equivalent to <i>mortis causa</i> general disposition in so far as regards the making up of a title,	368
but not to have this effect where heir died before 1st October 1874,	369
decree of service dated prior to 1st October 1874 not to be challenged on ground of certain informalities,	403
Sheriff need not hold court to decide unopposed petition of,	411
under the Registration of Leases Act of 1857,	446

Servitudes—

prescription of, not altered by the Conveyancing Act,	373
sale of, under the Glebe Lands Act,	471

Settlement of Lands mortis causa.—See *Mortis Causa Settlements*.**Sheriff Clerk of Chancery—**

jurisdiction of, in services of heirs,	16
duties of, in services of heirs,	100 <i>et seq.</i> , 411
appointment of,	133
salary of,	135
to perform duties of clerk to presenter of signatures,	411

Sheriff of County—

jurisdiction of, in services of heirs,	91
duties of, in do.,	100 <i>et seq.</i> , 411
petition to, for completing title to lands where a proprie-	

Sheriff of County—continued.

tor with only a personal right has intervened between the person last infest and the petitioner,	333, 336
commutation of carriages and services into feu-duties, by,	352

Sheriff Clerks—

duties of, with reference to services of heirs,	100 <i>et seq.</i>
under the Land Registers Act of 1868,	511
remuneration therefor,	521

Sheriff of Chancery—

jurisdiction and duties of, with reference to services of heirs,	90-132
appointment of,	133
salary of,	135
in case of absence or disability of, substitute to be ap- pointed,	185
to perform duties of presenter of signatures,	411
petition may be presented to, for completing a title to lands where a person having only a personal right has intervened between the person last infest and the petitioner,	333, 336

Sheriff Court Books—

extracts from, to bear certificate of stamp-duty on deed,	580
form of warrant of execution in extracts from,	530

Signatures for Crown Writs Abolished, 145

Signatures, Presenter of.—See *Presenter of Signatures.*

Solemnities in the Execution of Deeds.—See *Execution of Deeds.*

Special Service.—See *Service of Heirs.*

Stamp-Duty.—

on notarial instruments,	58
on mandate for petition of service,	93
on writs (except Crown writs) granted under the Consoli- dation Act and the Registration of Leases Act,	220
on writs engrossed on deeds,	266
progressive, abolished,	24, 267
on minute effecting consolidation,	32
on memorandum allocating feu-duties,	331
on discharge of casualties,	347
on memorandum constituting a feu-duty or additional feu-duty,	349
extracts of deeds to bear certificate of,	500, 513

Statutes referred to.—See separate Index, printed *post*.

Stipend, payment of, not affected by Apportionment Act,	32, 487
--	----------------

Sub-infeudation—

alternative holding not a contravention of a prohibition against,	26
prohibition against not affected by the Consolidation Act, subfeus not to be validated by implied entry under Conveyancing Act, where effectually prohibited prior to 1st October 1874,	275
prohibition against, in feu rights granted after 1st October 1874 annulled,	306
	355

Sub-Lease, registerable under the Registration of Leases Act of 1857,	432
--	------------

Subscription.—See *Execution of Deeds*.

Succession.—

of creditor in heritable security now moveable,	221
including security over recorded lease, see <i>Addenda</i> , printed after <i>Preface</i> .	
right of any person by succession as heir not challengeable after 20 years,	341
of creditor in real burden now moveable,	366
except in the case of ground annuals,	367
distinction between heritage and conquest abolished, . .	378

Summons—

of constitution may be combined with adjudication, . .	139
modern form of, of constitution and adjudication against an heir,	142
will of, may contain warrant of inhibition,	285
alteration in law as to litigiosity created by execution of, .	291
in new form of action for payment of a casualty,	322

Superior—

bound to grant writs of <i>clare constat</i> ,	193
incompetent for, to grant charters by progress, with certain exceptions,	303
rights of, reserved, notwithstanding implied entry under the Conveyancing Act,	307
bound to acknowledge intimation of change of ownership, .	307
not entitled to charge vassal with expense of entering recorded disposition in his chartulary,	310, 356
right of, to casualties, feu-duties, &c., not affected by implied entry under Conveyancing Act,	314
may raise action for payment of casualty,	317
may elect between discharge and commutation of casualties, .	348
mid-superior may redeem casualties,	351

Superior—*continued.*

Page

bound to accept annual sum in lieu of carriages and services determined by sheriff,	352
monopoly of agent of, in preparing vassal's titles abolished,	354
except in feu rights granted in implement of agreements entered into before the passing of the Conveyancing Act,	358
right of, to casualties not affected by that Act, where terms agreed on but not carried out at passing thereof,	357
may commute such casualties into an annual sum,	<i>ib.</i>

Superior, Entry with.—See *Entry with Superior.***Superiority**—

provisions of the Consolidation Act as to forfeiture and relinquishment of,	200-218
these provisions virtually repealed by the Conveyancing Act,	219
defeasible under an alternative holding, swept away by the Conveyancing Act,	308
consolidation of, with property,	327

Surplus Price of lands sold under an heritable security—

consignation of,	239
how lands are to be disencumbered when there is none,	397

Survivance of Heirs.—See *Personal Right to Land.***Tailzies,**—See *Entail.***Teinds, Court of Session as Commissioners of.**—See *Glebe Lands Act.***Tenant.**—See *Lease.***Tendering Heir for entry, to evade payment of Composition,** 309**Tenendas may be referred to in Charters and Writs by subject superiors,** 191**Tenure**—

Consolidation Act applies to land held by any description of,	264
See also <i>Burgage and Booking.</i>	

Terce—

heritable securities still heritable <i>quoad</i> ,	223
excluding <i>pro tanto</i> the superior's claim to a legal casualty,	316

Term of Entry—

short clause expressing, in the case of lands not held burgage,	21, 23
short clause expressing, in the case of lands held burgage,	27, 38
presumptive, where none is stated,	364

	Page
Testamentary Writing—	
execution of,	66
as regards moveable estate, effectual if executed according to the law of the country in which it is made,	66
now habile to convey heritage,	63
authentication of	66
English will now effectual as regards Scotch heritage	66
trustee or executor must apply lands for purposes of trust or will,	70
trustee or executor may complete title though there is no direct conveyance to him,	391
notarial execution of	384
Testing Clause of Deeds.— <i>See Execution of Deeds.</i>	
Testing Clause of Notarial Instruments,	56-7
Titles to Land Consolidation Act.— <i>See Consolidation Act.</i>	
Town Clerks of Royal Burghs—	
to sign writs of <i>clare constat</i> to heirs in burghage subjects,	197
fees of, in office at 1st October 1845,	262
where no burgh register of sasines kept, bound to subscribe signature on payment of certain fees,	280
fees of, appointed prior to March 1860, reserved,	282
no, appointed after March 1860, to have exclusive privilege of preparing deeds,	282
not to have right to compensation for alterations in office if appointed after March 1860,	280
official acts of, not to be affected by personal interest in deeds recorded,	283
Translation—	
of moveable property,	468
of securities over recorded leases,	441
Transmission of Moveable Property Act of 1862—	
short title,	469
date of commencement,	463
interpretation of terms,	467
personal bond or conveyance of moveable estate may be assigned in short form,	463
forms of assignation,	464, 465
assignation may be written on conveyance,	464, 465
mode of intimating assignation,	465
old forms may be used,	467
Trusts Act of 1867—	
provisions of Consolidation Act as to completion of title by judicial factors, applicable to petitions and war- rants under,	80

Trusts Act—*continued.*

appointment of new trustees under,	83
completion of title by a beneficiary of a lapsed trust under,	83

Trustee—

may complete a title to lands bequeathed, although there is no direct conveyance to him,	391
must apply lands for purposes of trust or will,	70
appointment by Court of new,	83
for religious or educational purposes, successors in office do not require to make up titles to land, &c.,	88
casualties payable by,	324
heir of last, may now complete title like any other heir-at-law,	387
but not entitled to administer the trust estate except with consent of beneficiaries or under the order of the Court,	388
mode of making up title by a new trustee appointed by the Court, where a trust title has already been completed and recorded,	389
lands to vest <i>ipso jure</i> in successors of <i>ex officio</i> trustees, if infert,	390
completion of title by Judicial Factor on trust estate.— See <i>Judicial Factor</i> .	
may complete title to lands, &c., by notarial instrument,	84

Trustee in a Sequestration—

form of instrument in favour of, in the case of lands,	86
do., in the case of heritable security,	87
do., in the case of recorded leases, &c.,	449
competitions with heritable creditors,	408

Ultima Hæres, Charter of, 145**Unrecorded Conveyance.**—See *Assignment of Unrecorded Conveyance.***Vassal**—

liable for feu-duties until notice of change of ownership given to superior	306
See also <i>Superior</i> .	

Vesting of Personal Right in Heir.—See *Personal Right to Lands.***Vitiation**—

must be authenticated in deeds,	379
erasures in instruments,	272
other vitiations in instruments must be authenticated,	273
erasures in record of deed or instrument,	407

Warrandice—

short form of clause of, in conveyances of land not held	
burgage,	22, 23
do., in conveyances of land held burgage,	27, 29
import of such clauses,	30
import of clause of, in bond and disposition in security, .	231
in assignations of moveable property,	465

Warrant of Execution—

form of, amended by Act of 1877,	529, 530
execution competent thereon,	531
if prior to 10th August 1877 unchallengeable on certain	
grounds,	533

Warrant of Infeftment, not now necessary, 21**Warrant of Inhibition, 285****Warrant of Registration—**

must be written or endorsed on all writings to be recorded	
in any register of sasines,	267, 372
certain burgage deeds formerly excepted from this rule, 267 <i>et seq.</i>	
this exception now abolished,	372
objects of,	48
not competent to challenge, on certain grounds, if recorded	
prior to 31st December 1868,	273
for preservation, or preservation and execution, as well as	
publication,	512, 533

Forms of—

where used with a clause of direction to record part	
of conveyance,	42
on a conveyance, &c., when presented without assigna-	
tion apart,	49
on a conveyance, &c., when presented with assigna-	
tion apart, or notarial instrument,	49
on a conveyance presented for registration, <i>propriis</i>	
<i>manibus</i> ,	50
on a writ to be registered for preservation, or preserva-	
tion and execution, as well as publication,	514

Will.—See *mortis causa settlement of heritage, Testamentary Writing, and English Will.*

Witness.—See *Execution of Deeds.*

Women may act as instrumentary witnesses, 265

Writs, Assignation of.—See *Assignation of Writs.*

Writ of Acknowledgment.—See *Acknowledgement, Writ of.*

Writ of Clare Constat.—See *Clare Constat.*

Writ of Confirmation.—See *Confirmation, Entry by.*

Writ of Investiture.—See *Investiture, Writ of.*

Writ of Resignation.—See *Resignation, Writ of.*

Writs by Progress, Abolition of—

by the Conveyancing Act, 303

writs excepted from the operation of the Act, 303

**Writer's name and designation not now necessary
in the testing clause, 378**

**Writer to the Signet alone entitled to prepare draft
of Crown Charter or Writ, 146**

INDEX OF CASES.

- Addison and Others, 381, 383.
 Advocate, Lord, v. Lord Rollo, 314.
 Aitchison's Trustees v. Aitchison, 385.
 Aitken, Hope v., 316, 352.
 Allan, Scottish Heritable Security Co. v., 236.
 Allan's Trs. v. Duke of Hamilton, 346.
 Arbroath, Mags. of, v. Dickson, 361.
 Arthur, Hill v., 380.
- Bain, Royal Bank v., 409.
 Bayley, Ferrier's Trs. v., 309, 321.
 Birrell, Miller v., 380.
 Black, Park's Curator v., 328.
 Boyd v. Bruce, 310.
 Brand's Trs. v. Brand's Trs., 65.
 Brisbane, Morris v., 310, 316, 345, 346.
 Browne, 478.
 Brown's Trs., Budge v., 409.
 Brown v. Macdonald, 5, 224.
 Brownlee v. Miller, 33.
 Brownlee, Rossmore's Trs. v.,
 As to forfeiture of superiority, 202.
 As to tendering heir of last vassal, 309.
 Bruce, Boyd v., 310.
 Budge v. Brown's Trs., 409.
 Burns, Stewart v., 379.
- Cairns v. Howden, 33.
 Caldwell, 498.
 Caledonian Railway Co., Hill v., 346.
 Caledonian Railway Co. v. Watt, 316.
 Campbell v. Morison, 486, 490.
 Campbell v. Campbell, 119.
 Campbell, Stevens v. 288.
 Catton, Mackenzie v., 61, 379.
 Cauvin's Hospital v. Falconer, 327.
 Colquhoun v. Walker, 26.
 Connel's Trs. v. Connel, 66.
 Crawfords, Rodger v., 437, 440, 454.
- Dangerfield, Traill v. 33.
 Dickson, Mags. of Arbroath v., 361.
- Dobie v. Duncanson, 291.
 Dove v. Henderson, 288.
 Drummond, Robin v., 321.
 Duff v. Gorrie, 82.
 Duff v. Mags. of Elgin, 284.
 Duncanson, Dobie v., 291.
- Easson, Thomson's Trs. v., 380, 382.
 Edinburgh and Leith Glass Co., Leith Heritages Co. v.,
 As to warrandice, 33.
 As to implied entry with superior, and relief of casualties, 317, 318, 321.
 Edinburgh Ecclesiastical Commissioners, Latta v., 32, 487.
 Edinburgh, Mags. of, Edinburgh Roperie Co. v., 345.
 Edinburgh Roperie Co. v. Mags. of Edinburgh, 345.
 Edmond v. Edmond, 68.
 Elgin, Mags. of, Duff v., 284.
- Falconer, Cauvin's Hospital v., 327.
 Farquhar v. Farquhar's Trustee, 65.
 Ferrier's Trs. v. Bayley, 309, 321.
 Fogo, 485, 490.
- Gardner v. Lucas, 379, 381.
 Glendonwyn v. Gordon, 61.
 Gloag v. Rutherford, 490.
 Glover Incorporation of Perth, Earl of Zetland v., 328.
 Gordon, Glendonwyn v., 61.
 Gorrie, Duff v., 82.
 Graeme v. Graeme's Trs., 384.
 Graham, Tod's Trs. v., 321.
 Gray v. Gray's Trs., 61.
 Greig, 291.
- Hamilton, Duke of, Allan's Trs. v., 346.
 Hannay, &c., 3, 266.
 Hardy's Trs. v. Hardy, 67.
 Henry v. Reid, 385.
 Herdman, 490.

- Hill v. Arthur, 380.
Hill v. Caledonian Railway Co., 346.
Henderson, Dove v., 288.
Henderson v. Wallace, 236.
Hope v. Aitken, 316, 352.
Hutton v. Macfarlane, 310.
- Imrie, 490.
Inverkeithing, Mags. of, v. Ross, 305, 346.
- Johnston v. Pettigrew, 48, 50, 274.
- Kirkpatrick v. Kirkpatrick's Trs., 66, 364.
- Latta v. Edinburgh Ecclesiastical Commissioners, 32, 487.
Lauder v. Shiels, 38.
Leith Heritages Co. v. Edinburgh and Leith Glass Co.,
 As to warrantice, 33.
 As to implied entry with superior, and relief of casualties, 317, 318, 321.
- Lindsay, Wilson v., 70.
Lockhart, Moreton's Trs. v., 127
Lucas, Gardner v., 379, 381.
- M'Brair, M'Farlane v., 61.
M'Cutcheon v. M'William, 361.
Macdonald, Brown v., 5, 224.
Macfarlane, Hutton v., 310.
M'Farlane v. M'Brair, 61.
Mackenzie v. Catton, 61, 379.
Mackie, 492.
Mackintosh v. Ross, 119.
M'Leod's Trs. v. M'Leod, 68.
Macknight, 84.
M'Laren v. Menzies, 382, 383.
Macleod, 473, 484, 486.
Maconochie, 82.
M'William, M'Cutcheon v., 361.
Mags. of Arbroath v. Dickson, 361.
Mags. of Edinburgh v. Whitehead 310, 356.
Mags. of Edinburgh, Edinburgh Roperie Co. v., 345.
Mags. of Elgin, Duff v., 284.
Mags. of Inverkeithing v. Ross, 346.
Malcolm's Trs., Veasey v., 380.
Maxwell's Trs. v. Scott, 32.
Menzies, M'Laren v., 382, 383.
Millar v. Birrell, 380.
Miller, Brownlee v., 33.
More, 119.
Moreton's Trs. v. Lockhart, 127.
Morris v. Brisbane, 310, 316, 345, 346.
Morison, Campbell v., 486, 490.
Morrison's Trs. v. Webster, 315.
- Nisbet v. Smith, 330.
- Padwick v. Stewart, 343.
Park's Curator v. Black, 328.
Penicuik Glebe, 478.
Pettigrew, Johnston v., 48, 50, 274.
Pitcairn v. Pitcairn, 67.
Pringle, &c., 60.
- Reid, Henry v., 385.
Robb's Trs. v. Robb, 67.
Robin v. Drummond, 321.
Rodger v. Crawfords, 437, 440, 454.
Rollo, Lord, Lord Advocate v., 314.
Ross, Mackintosh v., 119.
Ross, Mags. of Inverkeithing v., 305, 346.
Rossmore's Trs. v. Brownlee and Others,
 As to forfeiture of superiority, 202.
 As to tendering heir of last vassal, 309.
- Royal Bank v. Bain, 409.
Russell v. Russell, 81.
Rutherford, Gloag v., 490.
- Scott, 82.
Scott, Maxwell's Trs. v., 32.
Scottish Heritable Security Co. v Allan, 236.
Shiels, Lauder v., 38.
Sivright v. Straiton Estate Co., 309.
Smith, Nisbet v., 330.
Smith v. Wallace, 61.
Smyth v. Smyth, 382, 383.
Stevens v. Campbell, 288.
Stewart (Minister of Wilton), 485.
Stewart v. Burns, 379.
Stewart, Padwick v., 343.
Straiton Estate Co., Sivright v., 309.
Symington v. Symington, 288.
- Thomson's Trs. v. Easson, 380, 382.
Tod's Trs. v. Graham, 321.
Traill v. Dangerfield, 33.
- Veasey v. Malcolm's Trs., 380.
- Wallace, Henderson v. 236.
Wallace, Smith v., 61, 365.
Walker, Colquhoun v., 26.
Watt, Caledonian Railway Co. v., 316.
Webster, Morrison's Trs. v., 315.
Whitehead, Mags. of Edinburgh v., 310, 356.
Wilson v. Lindsay, 70.
- Zetland, Earl of, v. Glover Incorporation of Perth, 328.

INDEX OF ACTS OF PARLIAMENT REFERRED TO,

BESIDES THOSE PRINTED IN THIS WORK AND THOSE
REPEALED BY THE CONSOLIDATION ACT.

- 1449, c. 18 (Leases), 434.
1474, c. 57 (Entering of Vassals), 201.
1540, c. 106 (Letters of Charge), 140.
1567, c. 27 (Sasine in Burgage lands), 52.
1572, c. 48 (Glebes), 470.
1579, c. 75 (Register of Hornings), 519.
1581, c. 119 (Register of Interdictions), 518.
1592 (Mines and Minerals), 145, 305.
1617, c. 12 (Prescription), 373, 374.
1617, c. 13 (Prescription of Retours), 1617, c. 16 (Register of Sasines), 502.
1621, c. 27 (Letters of Charge), 141.
1661, c. 24 (Appearand Heirs), 126, 333.
1661, c. 31 (Abbreviate of Adjudication), 429.
1661, c. 52 (Personal Bonds), 225.
1661, c. 62 (Comprisings), 179.
1672, c. 13 (Ann), 487.
1672, c. 16 (Register of Sasines), 502.
1672, c. 19 (Adjudication), 131.
1685, c. 22 (Entails), 34, 46.
1685, c. 38 (Registration of Writs), 496, 498.
1686, c. 19 (Register of Sasines), 502.
1693, c. 13 and 14 (Register of Sasines), 502, 503.
1693, c. 35 (Procuratory of Resignation), 199.
1695, c. 24 (Apparent Heirs), 128, 130, 333, 341.
1696, c. 5 (Bankruptcy), 276.
1696, c. 18 (Register of Sasines), 502.
1696, c. 19 (Register of Interruptions of Prescription), 518.
1696, c. 35 (Notour bankrupts), 276.
1698, c. 4 (Registration of Writs), 498.
1 Geo. I., c. 54 (Personal Services), 352.
20 Geo. II., c. 50 (Entry by Resignation), 186, 190, 201.
10 Geo. III., c. 51 (Entail), 280.
49 Geo. III., c. 42 (Registration), 462.
54 Geo. III., c. 137 (Bankruptcy), 180, 277.
4 and 5 Will. IV., c. 24 (Compensation), 411.
6 and 7 Will. IV., c. 42 (Entail), 280.
1 and 2 Vict. c. 114 (Personal Diligence), 291, 532.
1 and 2 Vict. c. 119 (Sheriff Court), 134.
2 and 3 Vict. c. 41 (Bankruptcy), 408.
4 and 5 Vict. c. 24 (Entail), 280.
11 and 12 Vict. c. 36 (Entail), 280.
16 and 17 Vict. c. 80 (Sheriff Courts), 109.
16 and 17 Vict. c. 94 (Entail), 280.
19 and 20 Vict. c. 56 (Exchequer), 150, 155.
19 and 20 Vict. c. 79 (Bankruptcy), 85, 277, 408.
19 and 20 Vict. c. 91 (Adjudications and Judicial Sales), 180.
24 and 25 Vict. c. 114 (Wills), 66.
25 and 26 Vict. c. 37 (Crown Private Estates), 414.
25 and 26 Vict. c. 89 (Companies), 85, 278, 299, 410.
25 and 26 Vict. c. 101 (Police and Improvement Act), 235.
30 and 31 Vict. c. 97 (Trusts Act), 81, 82, 390.
30 and 31 Vict. c. 131 (Companies), 85, 299, 410.
30 and 31 Vict. c. 144 (Assignment of Policies of Insurance), 468.
31 and 32 Vict. c. 54 (Judgments Extension), 530.
31 and 32 Vict. c. 100 (Court of Session), 118, 120, 121, 122, 123, 137, 285, 294, 518.
33 and 34 Vict. c. 34 (Public and Charitable Trusts), 224.
33 and 34 Vict. c. 35 (Apportionment Act), 32, 225, 489.
33 and 34 Vict. c. 97 (Stamps), 24, 56, 93, 221, 267, 350.
34 and 35 Vict. c. 68 (Glasgow Boundaries), 503.
36 and 37 Vict. c. 63 (Law Agents), 134, 147, 158, 499.
37 and 38 Vict. c. 35 (Statute Law Revision), 273.
37 and 38 Vict. c. 64 (Evidence Amendment), 109.
38 and 39 Vict. c. 61 (Entail), 280.
38 and 39 Vict. 66 (Statute Law Revision), 134, 137, 183, 185, 505, 506.

INDEX OF ADDITIONAL CASES.

- Advocate, Lord, v. Buchanan and Geils, 375.
 Aim's Tr., v. Aim, 69.
 Anderson, Lyons v., 236.
 Anderson, Urquhart v., 236, 409.
 Breadalbane, E. of, v. Macdougall, 320.
 Brown and Others, Stewart and Others, v., 236.
 Browne and Others, 67, 382.
 Buchanan and Geils v. Lord Advocate, 375.
 Bulloch, Stewart v., 346.
 Campbell v. Campbell, 61.
 Carrick and Others v. Rodger, Watt, & Paul, 394.
 Connell's Trs., Hinton v., 374.
 Crawford v. Dempster, 326.
 Cumming v. Skeoch's Trs., 379.
 Dempster, Crawford v., 326.
 Dewar, Urquhart v., 69.
 Dick's Trs. v. Whyte's Tr., 409.
 Dullatur Feuing Co., Ritchie & Stewart v., 394.
 Farquharson v. Farquharson, 70.
 Fleming's Trs. v. Fleming's Tutors, 333.
 Garrett and Another, 383.
 Gibb v. Commissioners of Inland Revenue, 347, 350.
 Gibson's Tr., Stewart v., 236, 316.
 Glasgow University v. Yuill's Tr., 395.
 Guild, Duke of Hamilton v., 309.
 Guthrie and Others, 225.
 Guthrie and M'Connochy v. Smith, 312.
 Haddington, Earl of, Marquis of Tweeddale's Trs. v., 316.
 Hamilton, Duke of, v. Guild, 309.
 Hamilton, Duke of, Hope v., 309.
 Hinton and Others v. Connell's Trs., 374.
 Hodge v. Hodge, 225.
 Hope v. Duke of Hamilton, 309.
 Inland Revenue, Commissioners of, Gibb v., 347, 350.
 Lamb, Main v., 332.
 Lamont v. Rankin's Trs., 309.
 Lyons v. Anderson, 236.
 M'Adam v. M'Adam, 333.
 Macdougall, Earl of Breadalbane v., 320.
 M'Leod, Nicolson v., 70.
 Main, Lamb v., 332.
 Monteith v. Monteith's Trs., 8, 225.
 Murdoch & Rodger, Stuart v., 321.
 Nicolson v. M'Leod, 70.
 Rankin's Trs., Lamont v., 309.
 Ritchie & Sturrock v. Dullatur Feuing Co., 394.
 Rodger, Watt, & Paul, Carrick and Others v., 394.
 Sandeman v. Scottish Property Building Co., 316.
 Simson and Others, 379.
 Sivright v. Straiton Estate Co., 321, 346.
 Skeoch's Trs., Cumming v., 379.
 Smith, Guthrie & M'Connochy v., 321.
 Stephens, Straiton Estate Co. v., 319, 321.
 Stewart and Others v. Brown and Others, 236.
 Stewart v. Bulloch, 346.
 Stewart v. Gibson's Tr., 236, 316.
 Stewart v. Murdoch and Rodger, 321.
 Straiton Estate Co., Sivright v., 312, 346.
 Straiton Estate Co. v. Stephens, 319, 321.
 Studd v. Studd, 70.
 Tener's Trs. v. Tener's Trs., 382.
 Tweeddale's Trs. v. Earl of Haddington, 316.
 Urquhart v. Anderson, 236, 409.
 Urquhart v. Dewar, 69.
 Whyte's Tr., Dick's Trs. v., 409.
 Yuill's Tr., Glasgow University v., 395.

INDEX OF ACTS OF PARLIAMENT.

- 42 and 43 Vict. c. 40 (Conveyancing Act Amendment), 408.
 42 and 43 Vict. c. 44 (Lord Clerk Register), 523.
 43 and 44 Vict. c. 4 (Judicial Factor), 81.
 43 and 44 Vict. c. 34; and 45 and 46 Vict. c. 42 (Abolition of Imprisonment for Debt), 516.
 45 and 46 Vict. c. 53 (Entails), 280.
 46 and 47 Vict. c. 39 (Statute Law Revision). 1, 372, 375, 409, 411, 414, 418, 422, 425, 428.

